MONTANA LEGISLATIVE HISTORY

Chapter 375 1997

Bill H 111 S _____ Original bill & history ✓ C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) _____	___ C	Hearing Date(s) _____	___ C
1/14	✓ C	3/06	✓ C
_____	___ C	_____	___ C
_____	___ C	_____	___ C
Date Out 1/22	✓ C	3/7	✓

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

3/17	TRANSMITTED TO GOVERNOR		
3/19	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 93		
	EFFECTIVE DATE: 03/19/97		

HB 109 INTRODUCED BY HARPER *LC0315 DRAFTER: KURTZ*

REVISE REGULATION OF PRIVATE FISH PONDS

BY REQUEST OF DEPARTMENT OF FISH, WILDLIFE & PARKS

12/30	INTRODUCED		
1/03	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/06	REFERRED TO FISH, WILDLIFE & PARKS		
1/13	FISCAL NOTE RECEIVED		
1/13	FISCAL NOTE PRINTED		
1/14	HEARING		
1/28	TABLED IN COMMITTEE		
4/05	MISSED DEADLINE FOR 71ST DAY TRANSMITTAL		
	DIED IN COMMITTEE		

HB 110 INTRODUCED BY SWANSON, ET AL. *LC0270 DRAFTER: PETESCH*

APPROPRIATE MONEY TO THE DEPARTMENT OF JUSTICE FOR TECHNICAL, LEGAL, AND ADMINISTRATIVE ACTIVITIES FOR THE STATE OF MONTANA NATURAL RESOURCE DAMAGE LITIGATION IN THE CLARK FORK RIVER BASIN

BY REQUEST OF GOVERNOR AND DEPARTMENT OF JUSTICE

12/30	INTRODUCED		
1/06	FIRST READING		
1/06	REFERRED TO APPROPRIATIONS		
1/14	HEARING		
1/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/21	2ND READING PASSED AS AMENDED	78	22
2/26	3RD READING PASSED	71	28
	TRANSMITTED TO SENATE		
3/03	FIRST READING		
3/03	REFERRED TO FINANCE & CLAIMS		
3/10	HEARING		
3/12	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED		
3/15	2ND READING CONCURRED	38	8
3/17	3RD READING CONCURRED	45	4
	RETURNED TO HOUSE		
3/21	SIGNED BY SPEAKER		
3/21	SIGNED BY PRESIDENT		
3/21	TRANSMITTED TO GOVERNOR		
3/26	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 154		
	EFFECTIVE DATE: 03/26/97		

HB 111 INTRODUCED BY AHNER *LC0421 DRAFTER: MACMASTER*

REVISE THE LAWS RELATING TO THE IDENTIFICATION AND REGISTRATION OF SEXUAL AND VIOLENT OFFENDERS

BY REQUEST OF DEPARTMENT OF CORRECTIONS & THE DEPARTMENT OF JUSTICE

12/30	INTRODUCED		
1/03	FISCAL NOTE REQUESTED		
1/06	FIRST READING		

1/07	REFERRED TO JUDICIARY		
1/14	HEARING		
1/20	FISCAL NOTE RECEIVED		
1/20	FISCAL NOTE PRINTED		
1/25	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/28	2ND READING PASSED	86	13
1/29	3RD READING PASSED	93	6
	TRANSMITTED TO SENATE		
1/30	FIRST READING		
1/30	REFERRED TO JUDICIARY		
3/06	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/18	2ND READING CONCURRED	48	0
3/19	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/08	2ND READING AMENDMENTS CONCURRED	99	0
4/09	3RD READING CONCURRED AS AMENDED	89	9
4/11	SIGNED BY SPEAKER		
4/12	SIGNED BY PRESIDENT		
4/14	TRANSMITTED TO GOVERNOR		
4/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 375		
	EFFECTIVE DATE: 10/01/97		

HB 112 INTRODUCED BY AHNER, ET AL. *LC0553 DRAFTER: HEFFELFINGER*

PROVIDE FOR AN AD HOC POSTRETIREMENT ADJUSTMENT FOR RETIRED TEACHERS

BY REQUEST OF TEACHERS' RETIREMENT BOARD

12/30	INTRODUCED		
1/03	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/06	REFERRED TO STATE ADMINISTRATION		
1/13	FISCAL NOTE RECEIVED		
1/15	FISCAL NOTE PRINTED		
2/05	HEARING		
2/19	TABLED IN COMMITTEE		
3/08	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/17	MOTION FAILED TO PLACE ON 2ND READING	43	54
4/05	MISSED DEADLINE FOR 71ST DAY TRANSMITTAL		
	DIED IN COMMITTEE		

HB 113 INTRODUCED BY MCCULLOCH *LC0227 DRAFTER: FOX*

PROVIDE FOR A JUDICIAL DISTRICT JUVENILE PILOT PROJECT FOR A FAMILY-FOCUSED COURT SYSTEM AND COMMUNITY COORDINATION

BY REQUEST OF JUVENILE JUSTICE & MENTAL HEALTH STUDY COMMISSION

12/30	INTRODUCED		
1/03	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/07	REFERRED TO CORRECTIONS SELECT COMMITTEE		
1/16	FISCAL NOTE RECEIVED		
1/17	HEARING		
1/17	FISCAL NOTE PRINTED		
3/10	TABLED IN COMMITTEE		
3/16	MISSED DEADLINE FOR 57TH DAY TRANSMITTAL		
	DIED IN COMMITTEE		

HOUSE BILL NO. 111

INTRODUCED BY AHNER

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE IDENTIFICATION AND REGISTRATION OF SEXUAL AND VIOLENT OFFENDERS; PROVIDING FOR A SEXUALLY VIOLENT PREDATOR DESIGNATION; PROVIDING IMMUNITY FOR NEGLIGENCE; AMENDING SECTIONS 41-5-523, 44-6-101, 46-18-201, 46-23-501, 46-23-502, 46-23-503, 46-23-504, 46-23-505, 46-23-506, 46-23-507, AND 46-23-508, MCA; REPEALING SECTION 46-18-254, MCA; AND PROVIDING APPLICABILITY DATES."

WHEREAS, the Legislature finds that the danger of recidivism posed by sexual and violent offenders and the protection of the public from these offenders is of paramount concern to government and the people; and

WHEREAS, the Legislature further finds that law enforcement agencies' efforts to protect their communities, conduct investigations, and apprehend sexual and violent offenders is impaired by the lack of information about offenders who live within their jurisdictions; and

WHEREAS, the system of registering sexual and violent offenders provides law enforcement with information critical to preventing victimization and to resolving incidents of sexual or violent offenses promptly, including notification of the public when necessary to the continued protection of the community; and

WHEREAS, persons who have committed a sexual or violent offense have a reduced expectation of privacy because of the public's interest in safety; and

WHEREAS, the Legislature finds that releasing information about sexual or violent offenders to law enforcement agencies and, under certain circumstances, providing access to limited information about certain sexual offenders to the general public will further the primary governmental interest of protecting specific vulnerable groups and the public in general from potential harm.

THEREFORE, it is the policy of the State of Montana to assist local law enforcement agencies' efforts in protecting their communities by requiring that sexual or violent offenders register and to authorize the release of necessary and relevant information about sex offenders to the public.

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance for rules adopted under [section 12] concerning the qualifications of sexual offender evaluators and concerning evaluations of sexual offenders. The legislature intends that sexual offender evaluators possess education and experience similar to the education and experience requirements of therapists certified by the Montana sex offender treatment association. The legislature further intends that rules for evaluating the risk of repeat offenses by sexual offenders include the following factors:

(1) whether the sexual offender has a mental abnormality;

(2) whether the sexual offender's conduct is repetitive and compulsive;

(3) whether drugs or alcohol played a part in the offense or offenses;

(4) whether the sexual offender served the maximum term for the offense or offenses;

(5) whether the offense or offenses involved a child;

(6) the age of the sexual offender at the commission of the offense or offenses;

(7) the relationship between the sexual offender and the victim or victims;

(8) whether the offense or offenses involved use of a weapon;

(9) the number, date, and nature of prior offenses;

(10) conditions of release that minimize risk of another offense, including whether the sexual offender is under supervision or receiving counseling and treatment;

(11) physical conditions that minimize the risk of another offense, such as advanced age or debilitating illness of the sexual offender;

(12) whether psychological or psychiatric profiles of the sexual offender indicate a risk of recidivism;

(13) the sexual offender's response to and participation in treatment;

(14) recent behavior of the sexual offender;

(15) recent threats or gestures by the sexual offender against persons; and

(16) a review of any victim impact statements.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-5-523, MCA, is amended to read:

"41-5-523. Disposition -- sentence to correctional facility -- commitment to department --

placement and evaluation of youth -- restrictions. (1) If a youth is found to be a delinquent youth or a youth in need of supervision, the youth court may enter its judgment making one or more of the following dispositions:

(a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);

(b) place the youth on probation;

(c) subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years of age. A youth may not be sentenced to a state youth correctional facility unless the department informs the judge that space is available for the youth at that facility. The sentencing judge may not place limitations on the release unless recommended by the youth placement committee.

(d) require a youth found to be delinquent to register as a ~~sex~~ sexual or violent offender ~~pursuant to 46-18-254 and 46-23-506~~ under 46-23-504;

(e) place the youth in an in-state residence that ensures that the youth is accountable, provides for rehabilitation, and protects the public. Before placement, the sentencing judge shall seek and consider placement recommendations from the youth placement committee. The judge may not place the youth in an in-state residence unless the department informs the judge that resources are available for placement of the youth at that residence.

(f) commit the youth to the department. In an order committing a youth to the department:

(i) the court shall determine whether continuation in the youth's own home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home;

(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release into an appropriate placement.

(g) order restitution by the youth or the youth's parents;

(h) impose a fine as authorized by law if the violation alleged would constitute a criminal offense

if committed by an adult;

(i) require the performance of community service;

(j) require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;

(k) require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;

(l) require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may designate;

(m) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community and that does not obligate funding from the department for services outside the state of Montana without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(f), place a youth in a residential treatment facility.

(n) commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.

(i) A youth adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be committed or sentenced to a state youth correctional facility.

(ii) A youth adjudicated to be mentally ill or seriously mentally ill after placement in or sentencing to a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

(o) place the youth under home arrest as provided in Title 46, chapter 18, part 10.

(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) A youth in need of supervision or adjudicated delinquent for commission of an act that would not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

(b) A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the

power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

(c) A youth may not be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

(3) A youth placed in a state youth correctional facility or other facility or program operated by the department or who signs an aftercare agreement under 52-5-126 must be supervised by the department. A youth who is placed in any other placement by the department, the youth court, or the youth court's juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision by the youth probation officer includes but is not limited to:

(a) submitting information and documentation necessary for the person, committee, or team that is making the placement recommendation to determine an appropriate placement for the youth;

(b) securing approval for payment of special education costs from the youth's school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

(c) submitting an application to a facility in which the youth may be placed; and

(d) case management of the youth.

(4) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection (5). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court.

(5) The youth court shall determine the financial ability of the youth's parents to pay the cost of an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order the youth's parents to pay all or part of the cost of the evaluation.

(6) The youth court may not order placement or evaluation of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is transferable to criminal court under 41-5-206.

(7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.

(8) An order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and

subsequent hearing.

(9) Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of medical reports, social history material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(10) If a youth is committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(11) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

(12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the youth; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (11).

(14) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

Section 2. Section 44-6-101, MCA, is amended to read:

"**44-6-101. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of justice provided for in 2-15-2001.

(2) "DNA" means deoxyribonucleic acid.

(3) "DNA identification index" means the DNA identification record system established under 44-6-102.

(4) "DNA record" means DNA identification information stored in the DNA identification index for purposes of establishing identification in connection with law enforcement investigations or supporting statistical interpretation of the results of DNA analysis. The DNA record is considered the objective form of the results of a DNA analysis, such as the numerical representation of DNA fragment lengths, autoradiographs and the digital image of autoradiographs, and discrete allele assignment numbers.

(5) "DNA testing" means DNA analysis of materials derived from the human body for the purposes of identification consistent with this part.

(6) "Forensic DNA laboratory" means any laboratory operated by state government that performs DNA analysis on materials derived from the human body for use as evidence in a criminal proceeding or for purposes of identification.

(7) "Marker" means a method of describing individuals by genetic profile, such as blood or DNA

type, and has the specific meaning given to the word by department rule, which must take into account the meaning generally given to the word for forensic typing by DNA technologists.

(8) "Sexual offense" means the offenses contained in the definition of that term in 46-23-502.

(9) "Violent offense" ~~means an offense~~ has the meaning contained in ~~45-5-102, 45-5-103, 45-5-202, 45-5-302, 45-5-303, 45-5-401, or 45-6-103 or an equivalent offense under federal law or the law of another state~~ 46-23-502."

Section 3. Section 46-18-201, MCA, is amended to read:

"**46-18-201. (Temporary) Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) payment of the costs of confinement;

(v) payment of a fine as provided in 46-18-231;

(vi) payment of costs as provided in 46-18-232 and 46-18-233;

(vii) payment of costs of court-appointed counsel as provided in 46-8-113;

(viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(ix) community service;

(x) home arrest as provided in Title 46, chapter 18, part 10;

(xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;

(xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or

(xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; or

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence

of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in ~~46-18-254, 46-18-255, and~~ Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225.

46-18-201. (Effective July 1, 1997) Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) payment of the costs of confinement;

(v) payment of a fine as provided in 46-18-231;

(vi) payment of costs as provided in 46-18-232 and 46-18-233;

(vii) payment of costs of court-appointed counsel as provided in 46-8-113;

(viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(ix) community service;

(x) home arrest as provided in Title 46, chapter 18, part 10;

(xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;

(xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or

(xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; or

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in ~~46-18-254, 46-18-255, and~~ Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual offender program.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison

or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225.

(12) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does not apply to a person sentenced under 46-18-219."

Section 4. Section 46-23-501, MCA, is amended to read:

"**46-23-501. Short title.** ~~Sections 46-18-254,~~ Section 46-18-255~~,~~ and this part may be cited as the "Sexual or Violent Offender Registration Act"."

Section 5. Section 46-23-502, MCA, is amended to read:

"**46-23-502. Definitions.** As used in ~~46-18-254,~~ 46-18-255~~,~~ and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Predatory sexual offense" means a sexual offense against a person with whom a relationship has been established or furthered for the primary purpose of victimization or against a stranger.

(4) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct sexual offender and sexually violent predator evaluations.

~~(2)~~(5) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection ~~(2)(a)~~ (5)(a).

~~(3)~~(6) "Sexual or violent offender" means a person who has been convicted of a sexual or violent offense.

(7) "Sexually violent predator" means a person who has been convicted of a sexual offense and

who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses.

~~(4)~~(8) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-301 (when the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302, 45-5-303, 45-5-401, 45-5-603(1)(b), or 45-6-103; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection ~~(4)(a)~~ (8)(a)."

Section 6. Section 46-23-503, MCA, is amended to read:

"**46-23-503. Release of sexual or violent offender from place of confinement -- duties of official in charge.** (1) A sexual ~~of~~ or violent offender who is released from the custody of the department of corrections must be informed in writing not less than 10 days prior to release of the duty to register under ~~46-18-254, 46-18-255, and~~ this part by the official in charge of the place of confinement.

(2) ~~The~~ Prior to the offender's release from custody, the official shall obtain ~~the address at which the person expects to reside upon the person's release and report~~ and give to the department of justice and to the sheriff of the county in which the offender intends to reside or, if the offender intends to reside in a municipality, to the chief of police of the municipality:

(a) the address ~~to the department of corrections. The department shall inform the appropriate law enforcement agency having local jurisdiction where the person expects to reside.~~ at which the offender intends to reside upon release from the department's custody;

(b) the offender's fingerprints and photo, unless they are already in the possession of the department of justice, sheriff, or chief of police; and

(c) a form signed by and read to or by the offender stating that the offender's duty to register under this part has been explained to the offender."

Section 7. Section 46-23-504, MCA, is amended to read:

"**46-23-504. Persons required to register -- procedure.** (1) A sexual or violent offender ~~shall, within 14 days of conviction or release from prison or~~:

(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department;

(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;

(c) shall register within ~~14~~ 10 days of entering a county of this state for the purpose of residing or setting up a temporary domicile for ~~14~~ 10 days or more~~,~~ if the offender was sentenced in another state.

(2) ~~register, as required under 46-18-254, 46-18-255, and this part,~~ Registration under subsection (1)(a) or (1)(c) must be with the chief of police of the municipality or the sheriff of the county if the offender resides in an area other than a municipality. Whichever person the offender registers with shall notify the other person of the registration.

~~(2)~~(3) At the time of registering, the ~~person~~ offender shall sign a statement in writing giving the information required by the department of justice. The chief of police or sheriff shall fingerprint the ~~person~~ offender, unless the ~~person's~~ offender's fingerprints are on file with the department of justice, and shall photograph the ~~person~~ offender. Within 3 days, the chief of police or sheriff shall send copies of the statement, fingerprints, and photographs to the ~~department and the~~ department of justice ~~and to the sheriff of the county where the person resides, if registration is with the chief of police~~.

(4) The department of justice shall mail a registration verification form each 90 days to an offender designated as a level 3 offender under [section 12] and each year to a violent offender or an offender designated as a level 1 or level 2 offender under [section 12]. The form must require the offender's current address and notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the department.

~~(3)~~(5) The ~~person registered under this section~~ offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration.

~~(4)~~(6) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within ~~14~~ 10 days after entry of the judgment."

Section 8. Section 46-23-505, MCA, is amended to read:

"**46-23-505. Notice of change of address -- duty to inform -- forwarding of information.** If ~~a person~~ an offender required to register under ~~46-18-254, 46-18-255, and~~ this part changes residence, the ~~person~~ offender shall within 10 days of the change give written notification of the ~~person's~~ new address to the law enforcement agency with whom the ~~person~~ offender last registered. The law enforcement agency shall, within 3 days after receipt of the ~~information~~ new address, forward it and the offender's fingerprints and photograph to the ~~department, the~~ department of justice, ~~and the local law enforcement agency having jurisdiction over the new place of residence and~~ which shall forward a copy of the ~~statement~~ new address, fingerprints, and ~~photographs of the person~~ photograph to the ~~local law enforcement agency~~ sheriff having jurisdiction over the new place of residence and to the chief of police of the municipality of the new place of residence if the new place of residence is in a municipality."

Section 9. Section 46-23-506, MCA, is amended to read:

"**46-23-506. Duration of registration.** (1) A ~~person~~ sexual offender required to register under ~~46-18-254, 46-18-255, and~~ this part shall ~~comply with 46-18-254, 46-18-255, and this part~~ register for the remainder of the ~~person's~~ offender's life, except as provided in subsection ~~(2)~~ (3) ~~of this section~~ or during a period of time during which the ~~person~~ offender is in prison.

(2) A violent offender required to register under this part shall register:

(a) for the 10 years following release from confinement or, if not confined following sentencing, for the 10 years following the conclusion of the sentencing hearing; or

(b) if convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep registration current or of a felony, for the remainder of the offender's life unless relieved of the duty to register as provided in subsection (3).

~~(2)~~(3) At any time after 10 years ~~since the date of the offender's last conviction of a sexual or violent offense~~ of registration, the offender may petition ~~a district~~ the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register ~~under 46-18-254, 46-18-255, and this part~~. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition upon finding that:

(a) the offender has remained a law-abiding citizen; and

(b) continued registration is not necessary for public protection and that relief from registration is in the best interests of society. If the offender was designated as a sexually violent predator under [section 12], the court is also required to find that the offender no longer suffers from a mental abnormality or personality disorder that makes the offender likely to engage in a predatory sexual offense.

~~(3)~~(4) The offender may move that all or part of the proceedings in a hearing under subsection ~~(2)~~ (3) be closed to the public, or the judge may ~~take action~~ close them on the judge's own motion. ~~Notwithstanding closure of the~~ If a proceeding is closed to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to privacy."

Section 10. Section 46-23-507, MCA, is amended to read:

"**46-23-507. Penalty.** A sexual or violent offender who knowingly fails to register, verify registration, or keep registration current under ~~46-18-254, 46-18-255, and~~ this part may be sentenced to a term of imprisonment of not more than 5 years or may be fined not more than $10,000, or both."

Section 11. Section 46-23-508, MCA, is amended to read:

"**46-23-508. Dissemination of information ~~in register~~.** (1) Information ~~in the register~~ maintained under ~~46-18-254 and~~ this part is confidential criminal justice information, as defined in 44-5-103, except that:

~~(1)~~(a) the name of a registered sexual or violent offender is public criminal justice information, as defined in 44-5-103; and

~~(2) before releasing from a state prison an inmate who is a sexual offender, if the department believes that release of information concerning the inmate is necessary for public protection, the department shall petition the district court for the judicial district in which the prison is located or for the judicial district in which the inmate intends to reside for an order allowing the department to release relevant and necessary register information regarding the inmate to the public. The court shall grant the order if the court finds that the information is necessary for public protection.~~

(b) a law enforcement agency shall release any offender registration information relevant to the public if the agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information may protect the public and, at a minimum:

(i) if an offender was given a level 1 designation under [section 12], the agency with which the offender is registered shall notify the agency in whose jurisdiction the offense occurred of the registration;

(ii) if an offender was given a level 2 designation under [section 12], the agency with which the offender is registered may disseminate the offender's name to the public with the notation that the offender is a sexual or violent offender and may notify a victim of the offense and any agency, organization, or group serving persons who have characteristics similar to those of a previous victim of the offender of:

(A) the offender's approximate, but not exact, address, such as by stating the neighborhood, town, or part of a county;

(B) the type of victim targeted by the offense;

(C) the name, photograph, and physical description of the offender;

(D) the offenses for which the offender is required to register under this part; and

(E) any conditions imposed by the court upon the offender for the safety of the public; and

(iii) if an offender was given a level 3 designation under [section 12], the agency shall give the victim and the public notification that includes the information contained in subsection (1)(b)(ii), except that the offender's exact address must be included. The agency shall also include the date of the offender's release from confinement or if not confined, the date the offender was sentenced, with a notation that the offender was not confined, and shall include the community in which the offense occurred.

(2) The identity of a victim of an offense for which registration is required under this part may not be released by a law enforcement agency without the permission of the victim."

NEW SECTION. **Section 12. Sexual offender evaluations and designations -- rulemaking authority.** (1) The department shall adopt rules for the qualification of sexual offender evaluators who conduct sexual offender and sexually violent predator evaluations and for determinations by sexual offender evaluators of the risk of a repeat offense and the threat an offender poses to the public safety.

(2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual offender evaluator shall provide the court with a sexual offender evaluation report recommending one of the following levels of designation for the offender:

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the evaluator believes that the offender is a sexually violent predator.

(3) Upon sentencing the offender, the court shall:

(a) review the sexual offender evaluation report, any statement by a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

NEW SECTION. **Section 13. *Expungement of records on reversal of conviction.*** Upon final reversal of a conviction of a sexual or violent offense, the sentencing court shall order the expungement of any records kept by a court, law enforcement agency, or other state or local government agency under this part.

NEW SECTION. **Section 14. Immunity from suit.** A state or local governmental entity, a private entity, or an officer or employee of an entity is not liable in negligence for damages arising from a discretionary release or dissemination of or failure to release or disseminate information under this part.

NEW SECTION. **Section 15. Repealer.** Section 46-18-254, MCA, is repealed.

NEW SECTION. **Section 16. Codification instruction.** [Sections 12 through 14] are intended to be codified as an integral part of Title 46, chapter 23, part 5, and the provisions of Title 46, chapter 23, part 5, apply to [sections 12 through 14].

NEW SECTION. **Section 17. Two-thirds vote required.** Because [section 14] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

NEW SECTION. **Section 18. Applicability.** The provisions of [this act] relating to registration apply

to:

(1) sexual offenders who are sentenced or who are in the custody or under the supervision of the department of corrections on or after July 1, 1989; and

(2) violent offenders who are sentenced or who are in the custody or under the supervision of the department of corrections on or after October 1, 1995.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0111, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
Generally revises laws pertaining to registration of sexual and violent offenders; creates three-tier classification of sex offenders and imposes new requirements for address verification and dissemination of information to the public; and transfers responsibility for maintaining registry from Department of Corrections to Department of Justice.

ASSUMPTIONS:
Department of Justice (DOJ):

1. HB111 implements the federal Jacob Wetterling Crimes Against Children Act and sexually violent offender registration program, as well as amendments to that act passed by Congress in "Megan's Law." Montana's allocation of Byrne grant funding under the Omnibus Crime Control and Safe Streets Act of 1968 could be penalized by up to 10 percent if the state does not adopt revisions to its sex offender registration laws to be consistent with these federal statutes.
2. HB111 transfers from the Department of Corrections (DOC) to the Department of Justice (DOJ) the responsibility for maintaining the registry for sexual and violent offenders. It also adds new responsibilities under the law, including primarily the duty under Section 7 of the bill to mail a registration verification form each 90 days to an offender designated as a sexually violent predator and each year to a violent offender or other sex offender. The DOJ will serve as the clearinghouse for federal, state, and local law enforcement agencies for information contained in the registry about sexual and violent offenders. Notice to members of the public will be the responsibility of local law enforcement agencies.
3. HB111 contains a retroactive applicability date and will therefore require a review of the current registry and comparison with criminal history records to ensure that all offenders subject to the bill's provisions are registered as required by law.
4. The DOJ will initially create a manual records management system to accommodate the documents associated with registration of offenders and will develop registration and verification forms, procedures and training programs for users and staff. The DOJ will develop a records management system to include audit trails and security of data to protect information that is required by the bill to be kept confidential. The DOJ also will establish procedures for billing the costs of registration as allowed by Section 7 of the bill, establish a process for receipt and processing of offenders registering after an out-of-state conviction; and establish notification procedures for offenders who fail to register, re-register or keep registrations current.
5. Currently there are over 2,000 offenders in the registry maintained by the Department of Corrections. This number is expected to grow steadily, particularly since registration for violent offenders was not added until 1995. It cannot be estimated at this time how many new sex offenders will be designated as sexually violent predators under the bill.
6. In developing the registration system to coordinate with the criminal history records system already maintained by the DOJ and comparing the data to make sure all offenders are registered, the department estimates that approximately two hours per offender will be required. Once the system is in place, annual data input and address verification will require approximately one hour per offender.
7. Although the bill does not take effect until October 1, 1997, the budget authority should be approved effective July 1, 1997, so that the department is able to design, necessary forms, review and compare the data received from the DOC to match with the existing criminal history records system, and perform other start-up duties necessary to be ready for full implementation of the bill by October.

(Continued)

Dave Lewis 1-18-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Chris Ahner
CHRIS AHNER, PRIMARY SPONSOR DATE

8. For the DOJ to undertake the new responsibilities imposed by the bill, 1.00 FTE grade 11 at an annual cost of $25,370 will be required. Annual operating expenses are estimated at $8,119 (supplies, communications, travel, rent). In fiscal year 1998 only, operating expenses include programming at $5,000 and a consultant at $10,580 to analyze the project, contact courts and prosecutors, and work with the DOC to set up the notification process. (Estimated four months of a grade 15 salary minus the $2700 insurance). Equipment purchased in fiscal year 1998 is $17,950 (desk, chair, computer, file cabinet, fax, laser printer, and updated local area network server).

Department of Corrections (DOC):

9. The responsibility of maintaining a sex offender registry transfers to the DOJ. This would not cause any appreciable savings to the DOC as these responsibilities are not a significant portion of the work performed by a particular staff member and the legislation would still require cooperation and coordination with the DOJ.
10. The DOC assumes that offenders would properly register 14 days prior to release as the legislation requires because they would not wish to extend their incarceration. Therefore, there would be no anticipated fiscal impact of this change in responsibilities.
11. The DOC is required by this legislation to adopt rules for sex offender evaluators to determine the risk of offenders re-offending. This requirement would result in 80 hours of time for program personnel, 40 hours of administrative support time, 24 hours of attorney time, and $5,000 for operating expenses. There would be no impact for the staff hours, since the work will be performed by existing staff.
12. At the time of sentencing, the courts would require the DOC to perform evaluations as to the risk of re-offense. The DOC would contract for these evaluations at an approximate cost of $1,000. This would have no fiscal impact to the DOC as the courts are required to pay this cost.

FISCAL IMPACT:

Department of Justice:

Expenditures:	FY98 Difference	FY99 Difference
FTE	1.00	1.00
Personal Services	25,370	25,370
Operating expenses	18,699	8,119
Equipment	17,950	0
Program Development	5,000	0
Total	67,019	33,489
Funding:		
General Fund (01)	67,019	33,489

Department of Corrections:

Expenditures:		
Operating Expenses	5,000	0
Funding:		
General Fund (01)	5,000	0
Net Impact on Fund Balance: (Revenue minus Expense)		
General Fund (01)	(72,019)	(33,489)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
There could be additional operating expenses for the courts associated with the risk of re-offense evaluations.

HOUSE JUDICIARY

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
HB0098	CLARK, ROBERT 1/06	1/17		ELIMINATE HANGING AS MEANS OF EXECUTION PASS AS AMENDED 01/21 VOTE: 13-8		1/21
HB0111	AHNER, CHRIS 1/07	1/14		REVISE VIOLENT OFFENDER AND SEXUAL OFFENDER REGISTRATION LAW PASS AS AMENDED 01/22 VOTE: 14-5		1/25
HB0122	MCGEE, DANIEL 1/06	1/15		REQUIRE PAYMENT OF FILING FEES PRIOR TO CIVIL ACTION BY PRISONERS PASS AS AMENDED 01/17 VOTE: 15-5		1/20
HB0122	MCGEE, DANIEL 3/10			REQUIRE PAYMENT OF FILING FEES PRIOR TO CIVIL ACTION BY PRISONERS COM RPT - 03/14 VOTE:10-6		3/14
HB0127	JOHNSON, JOHN 1/23	2/05		REVISE POSTCONVICTION RELIEF LAWS IN DEATH PENALTY CASES TABLED ON 02/05 VOTE: 20-0		
HB0135	SMITH, LIZ 1/07	1/13		REVISE MEDICAL PAROLE AND STAGGER TERMS OF MEMBERS OF BD. OF PARDONS & PAROL PASS AS AMENDED 01/20 VOTE: 18-0		1/20
HB0137	SMITH, LIZ 1/06	1/13	1/20/97 Tabled 16-2	NO INQUEST FOR PRISONER DEAD FROM DEATH SENTENCE OR TERMINAL CONDITION PASS AS AMENDED 01/24 VOTE: 11-7		1/25
HB0141	KEENAN, BOB 1/06	1/13		REVISE ADMINISTRATIVE PROVISIONS CONCERNING SUPREME COURT DO PASS 01/15 VOTE: 20-0		1/16
HB0159	BARNHART, BEVERLY 1/06	1/17	1/29/97 Tabled 14-2	ALLOW DPHHS TO INITIATE CHILD CARE REMEDY IN JUSTICE,CITY,MUNI.OR DIST.COURT DO PASS 02/20 VOTE: 14-6		2/20
HB0163	JOHNSON, JOHN 1/06	1/24	2/10/97 Tabled 19-1	REVISE ADOPTION LAWS PASS AS AMENDED 03/25 VOTE: 15-4		3/25
HB0168	JOHNSON, ROYAL 1/06	1/21		GENERALLY REVISE CHILD SUPPORT ENFORCEMENT LAWS PASS AS AMENDED 01/24 VOTE: 14-5		1/25
HB0187	WALTERS, ALLEN 1/08	1/30		PENALTY WHEN ADULT LETS CHILD USE GUN AND DEATH OR BODILY INJURY OCCURS TABLED ON 02/05 VOTE: 18-0		

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bob Clark, on January 14, 1997, at 8:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 111, POSTED 1/8/97
Executive Action: HB 15 TABLED
HB 29, DO PASS AS AMENDED

EXECUTIVE ACTION ON HB 15

Motion: **REP. H.S. "SONNY" HANSON moved HB 15 DO PASS.**
{Tape: 1; Side: A; Approx. Time Count: 2.9}

Amendments: **REP. BRAD MOLNAR** and **REP. AUBYN CURTISS** discussed amending Line 10 after "or" to insert "operated in this state."
{Tape: 1; Side: A; Approx. Time Count: 3.0 - 8.3}

Motion: **REP. CURTISS moved to adopt the amendment.**
{Tape: 1; Side: A; Approx. Time Count: 8.4 - 9.4}

Discussion:
{Tape: 1; Side: A; Approx. Time Count: 9.5 - 20.6}

Vote: Motion carried 18 - 2, REPS. MC GEE and BOHARSKI voting no. *{Tape: 1; Side: A; Approx. Time Count: 20.7 - 21.9}*

Motion: **REP. LIZ SMITH moved HB 15 DO PASS AS AMENDED.**
{Tape: 1; Side: A; Approx. Time Count: 22.0}

Discussion:
{Tape: 1; Side: a; Approx. Time Count: 22.1 - 25.7}

Motion/Vote: **REP. WILLIAM BOHARSKI moved to Table HB 15.** The motion passed 10 - 9, REP. SOFT abstained. REPS. MC GEE, HURDLE, AHNER, BERGMAN, MOLNAR, HANSON, GRIMES, CURTISS, and CLARK voting no. *{Tape: 1; Side: A; Approx. Time Count: 25.8}*

HEARING ON HB 111

Sponsor: **REP. CHRIS AHNER**
{Tape: 1; Side: B; Approx. Time Count: 0.1 - 4.4}

Proponents:

DAVE OHLER, Department of Corrections
{Tape: 1; Side: B; Approx. Time Count: 4.6 - 4.9}

BETH BAKER, Department of Justice - EXHIBITS 1, 2, and 3
{Tape: 1; Side: B; Approx. Time Count: 5.0 - 14.4}

CATHY KENDALL, Board of Crime Control
{Tape: 1; Side: B; Approx. Time Count: 14.4 - 17.7}

MARY ALICE COOK, Advocate for Children and Families
{Tape: 1; Side: b; Approx. Time Count: 18.1 - 18.4}

Opponents:

W. JAMES KEMBEL, City of Billings
{Tape: 1; Side: B; Approx. Time Count: 18.8 - 20}

SCOTT CRICHTON, ACLU - EXHIBIT 4
{Tape: 1; Side: B; Approx. Time Count: 20.2 - 26.8}

Informational Testimony:

BETTY WADDELL, Montana Association of Churches
{Tape: 1; Side: B; Approx. Time Count: 27.0 - Tape 2, Side A 1.8;.}

REP. JOAN HURDLE - EXHIBIT 5
{Tape: 2; Side: A; Approx. Time Count: 1.9 - 7.9}

Questions From Committee Members and Responses:
{Tape: 2; Side: A; Approx. Time Count: 8.0 - Tape 3; Side A; 6.5}

Closing by Sponsor: **REPRESENTATIVE AHNER**
{Tape: 3; Side: A; Approx. Time Count: 6.6 - 7.7}

EXECUTIVE ACTION ON HB 29

Motion: **REP. SHIELL ANDERSON moved DO PASS on HB 29.**
{Tape: 3; Side: A; Approx. Time Count: 7.2}

Motion/Vote: **REP. ANDERSON moved that the seven amendments brought by Representative Bohlinger be adopted.** The motion carried unanimously.
{Tape: 3; Side: A; Approx. Time Count: 7.3 - 12.5; Comments: The amendments were offered at the 1/10/97 hearing.}

Motion: **REP. ANDERSON moved HB 29 DO PASS AS AMENDED.**

Motion: **REP. JOAN HURDLE moved to amend Page 1, Line 26 by inserting "or other alternative sentencing as may be recommended in" at the end of the line.**

Discussion: The committee discussed the proposed amendment.
{Tape: 3; Side: A; Approx. Time Count: 14.5 - 17.6; Comments: John MacMaster clarified the proposed amendment; i.e., insert a sentence, "Sentencing court must consider available alternatives to incarceration including those listed in 46-18-201 sub section 1 a, and particularly (i), (ix), (x) and (xi).}

Motion: **EXHIBIT 6** - Roll call vote, on the Hurdle Amendment failed 9 voting yes, 10 voting no.
{Tape: 3; Side: A; Approx. Time Count: 18.3 - 19.4}

Motion: **REP. DIANE SANDS moved to amend at Page 1, Line 23 be amended to delete everything after "in the school building" and substitute "for any appropriate purpose."**

REP. BILL BOHARSKI recommended a substitute amendment to place a period after "building" on line 23. **REP. SANDS** agreed to the substitution.

Motion: Motion to adopt the amendment passed by unanimous vote.
{Tape: 3; Side: A; Approx. Time Count: 22.0 - 22.7}

Amendments: **REP. BRAD MOLNAR** proposed an amendment to Line 1, Page 2 to re-insert "any destructive device as defined in 45-8-332" after the comma and to strike the entire sentence after "length."
{Tape: 3; Side: A; Approx. Time Count: 22.8 - end of Side A}

EXHIBIT 1
DATE 1/14/97
HB 111

Amendments to House Bill 111
Introduced Bill (White)

Prepared by Beth Baker
By Request of the Department of Justice
January 13, 1997

1. Page 15, line 25.
Following: "registration."
Insert: "The department of justice may by rule establish fees to cover registration costs incurred by the department in maintaining registration and address verification records. Fees retained to cover the department's costs must be deposited in the general fund."

EXHIBIT 2
DATE 1/14/97
HB 111

HB 111: Revision of Sexual and Violent Offender Registration and Public Notification Requirements

Background

The 1995 Legislature revised the laws pertaining to registration of sex offenders to include requirements for registration of some violent offenders and to clarify confidentiality requirements to allow more public notice. Since then, the 1996 Congress passed "Megan's Law," requiring community notice of the location of registered offenders where necessary for public safety. The U.S. Justice Department also published guidelines for implementation of the 1994 Jacob Wetterling Act, clarifying standards for state registration and notification systems so that states may easily share information about sex offenders.

Purpose of HB 111

- → **Provides greater public protection** by expanding the registration requirements to include all offenders convicted of felony assault against a family member, unlawful restraint against a child, and aggravated promotion of prostitution of a child, as well as convictions for attempt, solicitation and conspiracy to commit sexual or violent offenses.

- → **Improves the state's ability to keep current information** about sexual and violent offenders by requiring periodic address verification and by transferring the offender registry and record-keeping functions from the Department of Corrections to the Department of Justice, which already houses the state's criminal history records and criminal justice information network. Placing the registry within the state's criminal justice agency will improve consistency of information and efficiency in records management, enabling the Department of Justice to serve as the clearinghouse for federal, state and local law enforcement agencies on all criminal history information about sexual and violent offenders.

- → **Provides better public notification** when a sexual or violent offender moves into the community. Based on a determination of the offender's risk level made at the time of sentencing, information concerning the offender's identity, convictions, and residence may be released to the public without prior authorization of a court. The bill also allows local law enforcement to release any information necessary for public protection, and provides law enforcement agencies immunity from suit for decisions concerning release of information.

How the Registration System will work

Every person convicted of a sexual or violent offense will be required to register:
- → with local law enforcement at the time of sentencing if the offender is not sent to prison;
- → with the Department of Corrections at least 10 days prior to release from confinement if a prison sentence is imposed; or
- → with local law enforcement for out-of-state offenders relocating to Montana.

--over--

All registration information will be forwarded to the Department of Justice, compared with the offender's criminal history information, and distributed by the department to the FBI and to the local law enforcement agency where the offense occurred or where the offender intends to reside. Once the offender has registered, the Department of Justice will send an address verification form at least annually. The department also will be responsible for notifying local law enforcement of any changes in the offender's address.

Community notification will be handled at the local level by law enforcement agencies where the offender expects to reside. A petition in district court will no longer be required to obtain release of information. While minimal information is required to be released about a low-risk offender, those designated as moderate or high risk of reoffending will be subject to public notice requirements that may include location in the community, photograph and physical description, the offenses warranting registration, and any other registration information determined by local law enforcement to be in the interests of public protection.

The bill maintains existing law requiring sex offenders to register for life, and provides that violent offenders must remain registered for 10 years following their release from confinement, or longer if convicted during that time of failing to maintain their registration or of any other felony offense. As with current law, an offender may petition the court for relief from registration requirements after 10 years. However, if at the time of sentencing the offender was designated a "sexually violent predator," lifetime registration must continue unless the court finds that the offender no longer suffers from a mental abnormality or personality disorder likely to result in further predatory sexual criminal conduct.

In order for the sentencing court to determine whether an offender should be designated as a "sexually violent predator," the bill authorizes the Department of Corrections to adopt rules to establish the qualifications of sexual offender evaluators and the standards by which they determine the risk of a repeat offense and the threat an offender poses to the public safety.

Fiscal Implications of HB 111

The Department of Justice expects that implementing HB 111 will cost an estimated $100,000 for the 1999 biennium, the majority for the startup costs necessary to:

- → transfer the record-keeping function to the Department of Justice,
- → apply the registration requirements retroactively to offenders convicted since 1989,
- → assume new responsibilities concerning address verification and notification of other law enforcement agencies.

The Department of Justice will begin by comparing the 2,000-plus records already in the registry to its own criminal history record information, and will eventually automate the entire system, making information more accessible to law enforcement. The ongoing costs of this service will be minimal, especially when compared to the cost of not having this critical information available to law enforcement and the public.

HB 111 preserves Montana's entitlement to federal grant funding under the Omnibus Crime Control and Safe Streets Act of 1968 ("Byrne Formula Grant Funding"). States that fail to implement the Jacob Wetterling Act by the end of 1997 are subject to a 10 percent loss ($260,000 in Montana) of these federal funds, most of which goes directly to local programs.

EXHIBIT 3
DATE 1/14/97
HB 111

House Bill 111

Testimony of Beth Baker
Department of Justice

House Judiciary Committee
January 14, 1997

The Department of Justice agreed to join with the Department of Corrections in requesting this legislation for two primary reasons. First, consistent with efforts being made at the national level and across the country, it will allow better notice to Montana communities of sex offenders who may pose a danger to children or other community residents. Second, it will improve the state's ability to keep track of the registration of sexual and violent offenders by transferring that function to the Department of Justice, which already is responsible for maintaining most criminal history record information.

Notice to the community is better accomplished by removing the requirement that a judge hear and grant a petition filed by the Corrections Department before most information about an offender may be released, and by placing the discretion for release of information with local law enforcement, who will have the information first and are in a better position than the Department of Corrections to know what the public safety needs are in their own community.

Record-keeping will be improved by transfer of the registry to the Department of Justice because the Department now maintains the state's criminal history records system and operates the Criminal Justice Information Network for law enforcement statewide. The Department will be able to compare criminal history records with the offender registry to ensure that offenders are registered and will make sure local law enforcement agencies receive registration information about offenders who were convicted or are planning to reside in their communities. The bill also requires periodic address verification of each offender in the registry.

Both goals will be better accomplished by the bill's clarification that registration must occur at least ten days prior to the offender's release from prison

Fiscal impacts: There will be a fiscal note attached to this bill, and there are two important aspects of it. First, because the bill not only transfers the record-keeping function to the Department of Justice but also imposes new obligations concerning address verification and notice to law enforcement, the Department of Justice will need funding to cover those responsibilities. The majority of the costs will occur in the first year as the new system is created and implemented. Ongoing costs are expected to be less than $35,000 per year. This cost is more than made up in the federal funding Montana will secure by implementing a sex offender registry that is compatible with the uniform system being

established at the federal level. Montana receives approximately $2.6 million each year in federal grant funds under the Omnibus Crime Control and Safe Streets Act of 1968. Up to ten percent of that money could be lost if the state does not have a registry that is consistent with federal law. Most of that money goes directly to local law enforcement and victims' programs and it is critical to protect our ability to receive those funds.

Amendment: In an attempt to alleviate some of the fiscal impact, we have submitted an amendment to clarify current law allowing the costs of registration to be passed to those offenders who are able to pay it. Section 46-23-504(5) (Page 15 of the bill) provides that the offender is responsible to pay the actual costs of registration if able. The proposed amendment will establish authority for the Department of Justice to adopt rules for charging a fee to cover the registration costs at the state level. This will not affect the ability of local law enforcement to impose their registration costs, but will make sure that to the extent possible the state's costs also are covered. Any fees collected would be deposited into the general fund.

EXHIBIT 4
DATE 1/14/97
HB 111

ACLU OF MONTANA
AMERICAN CIVIL LIBERTIES UNION
P.O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086 • FAX (406) 248-7763

January 14, 1997

Mr. Chairman, Members of the Committee:

For the record, my name is Scott Crichton, and I am the Executive Director of the American Civil Liberties Union of Montana, here today in opposition to HB 111.

I do so because as proposed it substantially erodes the delicate balance reached last session on this issue, while going further into politics of symbolism without attacking the real problem in any bold or effective manner.

I'm concerned that the definition of "mental abnormality" is so vague as to be non existent. The definition is important because an offender found to suffer from such an abnormality would be required to register for the rest of his life unless he could prove that he no longer suffered from the abnormality (46-23-506 3(b)).

The most odious and potentially dangerous section of the bill, Section 11, regards public notification. Under the law arrived at last session, law enforcement could inform the public about released sex offenders after they received a court order. This form of judicial pre-clearance permits the offender to protect his substantial privacy interests, and involves as determination by a neutral body that good reason (public dissemination necessary for "public protection") exists to override these interests. The new procedure eliminates judicial involvement, vests law enforcement with unfettered discretion to release sex offender information to the public, and immunizes state officials from the consequences of negligent release of such information.

This notification provision is based on a false premise that most sex offenses are committed by strangers -- fewer than 5% of sex offenses are committed by strangers: most are committed by family members or friends. The notification provision will therefore do little or nothing to increase public safety.

The registration provision requires sex offenders who were sentenced in another state to register within ten days of establishing residence in Montana. The problem

with this is that, unless the sentencing state has a similar registration provision, the offender would have no reason to know of his responsibilities under Montana law, and would subject himself to severe criminal penalties (up to five years in prison) merely by moving to Montana.

The statute provides for a five-year criminal penalty for failing to register, and sex offenders are required to register for the rest of their lives. Apart from the legal problems with the ex post facto applicability dates, the registration requirement inevitably would increase the already overwhelming overcrowding problem in Montana, while still doing little to increase public safety.

Much like the castration bill that was heard in Senate Judiciary yesterday, this is a non-serious response to a serious problem. Registration laws create an illusion of safety, but do little to prevent such crimes from occurring. Instead they encourage vigilantism and force ex-offenders, most of whom are not recidivists, to move from place to place, often failing to seek and complete treatment At the same time Congress and states are passing punitive laws that have only symbolic effect, public funding for treatment is becoming increasingly scarce even though studies have concluded that treatment is highly effective in reducing recidivism among sex offenders.

What is important to realize is that you cannot predict recidivism. Most experts in criminal justice and psychology say that predictions of who will re-commit crimes are wrong 3 out of 4 times. Community notification ignores the real problem of lack of treatment. Notification serves to ostracize the ex-offenders from the community, making re-integration into society next to impossible. Re-offenders demonstrate the failure of prisons to rehabilitate and of how critical continued therapy and treatment are for ex-offenders after they are released.

EXHIBIT 5
DATE 1/14/97
HB 111

DRAFT

CORRECTIONS DIVISION 20.7.301

Sub-Chapter 3

Sex Offender Evaluation and Treatment Provider Guidelines and Qualifications

20.7.301 SEX OFFENDER EVALUATION AND TREATMENT PROVIDER GUIDELINES AND QUALIFICATIONS (1) The purpose of sex offender evaluation and treatment provider guidelines and qualifications is to ensure that evaluation and treatment plans which are utilized in pre-sentence investigations are conducted by qualified individuals who are specially trained in sex offender treatment needs. (History: IMP, Sec. 46-18-111 MCA; NEW, Eff. ?/93.)
AUTH: 53-1-203, MCA IMP: 46-18-111, MCA

20.7.302 DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "District court" is the district unit of the Montana judicial system, presided over by district court judges.

(2) "Probation officer" is an employee of the probation and parole bureau of the department of corrections and human services who supervises clients placed under department jurisdiction by the district court or the board of pardons. Probation officers are responsible for preparing and presenting pre-sentence reports for the district court.

(3) "Sex offender" is an individual convicted of a felony offense under 45-5-502(3), 45-5-503, 45-5-505, 45-5-507, MCA (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625, MCA. (History: AUTH: 53-1-203, MCAIMP: 46-18-111, MCA)

20.7.303 GUIDELINES (1) A person is deemed qualified to complete an evaluation and recommendation of treatment for sex offenders under department of corrections and human services guidelines when the treatment provider either meets the qualifications set forth herein, or works under the direct supervision of a qualified treatment provider. (History: AUTH: 53-1-203, MCAIMP: 46-18-111, MCA

20.7.304 QUALIFICATIONS (1) The individual must have received specialized documentable training in evaluation and treatment approaches from a nationally recognized program or provider specializing in working with sex offenders;

(2) Received formal education in the area of normal and abnormal sexual functioning;

(3) Received at least six hours of documentable annual continuing education in sex offender therapy or human sexuality;

DRAFT

(4) Spent the first year of their specialized clinical practice having at least monthly consultation and peer reviews of cases with a specialized sex offender clinician who practices in accordance with established national standards; and

(5) Possess one of the following combinations of degree and experience:

(a) Relevant bachelor's degree and 4000 hours of specific sex offender treatment experience;

(b) Relevant master's degree, licensing and 2000 hours of specific sex offender treatment experience;

(c) Relevant doctoral degree, licensing and 2000 hours of specific sex offender treatment experience; or

(d) Medical degree and 2000 hours of specific sex offender treatment experience; and

(e) Is a full or clinical member of at least one relevant national organization which has ethics of practice to which they adhere. (History: AUTH: 53-1-203, MCA IMP: 46-18-111, MCA

(History: IMP, Sec. 46-18-111 MCA; NEW, Eff. ?/93.)

SANDRA WHALEY-OLSON, Ph.D.
1220 Avenue C, Suite F
Billings, Montana 59102
Phone: (406) 256-2305
Fax: (406) 657-5151, ext. 3

January 10, 1997

TO: Representative Joan Hurdle
House District 13

RE: Legislation being considered by the Judiciary Committee

I have reviewed some legislative proposals put forth by the Department of Public Health and Human Services. The intent of the proposed legislation is to define the role and function of health care professionals in commitment proceedings for the mentally ill, in involuntary commitment of chemically dependent persons, and in voluntary admission of minors. As a clinical psychologist who has worked on forensic cases, I am quite concerned by the potential impact of these proposals, which I do not feel would be apparent to individuals not involved in this line of work.

The proposed bills would, in essence, separate the evaluation of "chemical dependency" from other mental disorders and would limit evaluations to those professionals who are certified by the Department of Commerce as certified chemical dependency counselors. I would offer the following concerns and objections for the committee's consideration:

(1) The justification for certifying chemical dependency counselors (DPHHS #21), as presented in their proposal, is that the treatment and evaluation of substance abuse profoundly affects the lives of people, and, therefore, certification provides "for the common good by ensuring ethical, qualified, and professional practice of chemical dependency counseling." Nonetheless, the educational qualifications for certification are lower than other professionals who are licensed and available to evaluate substance abuse.

(2) While the above proposal indicates that it does not intend to limit or preclude other health care providers, the companion proposal (DPHHS #8) does limit involuntary commitment of chemically dependent persons to testimony by a certified chemical dependency counselor or physician.. This sets the stage for a closed system of evaluation of substance abuse, which does not allow for a check on any improper evaluation methods and procedures. An open system, in which the trier of fact determines the qualifications of the expert and the weight to be given their testimony, is more appropriate.

(3) There is no logical argument for singling out "chemical dependency" for specialized evaluation and, in fact, doing so poses potential risks. Research has shown that a high percentage of those who can be diagnosed as alcohol or substance abusers or chemically dependent also experience other psychological problems, which occur concurrently with, antecedent to, or resulting from their drinking. There are multiple etiologies for substance abuse , requiring evaluation by professionals qualified to assess the whole range of psychiatric disorders. If the state perceives this population of citizens to be inadequately served by mental health care providers already licensed to practice, they might consider the approach used by other states. That is, require a certain number of continuing education credits be obtained in the area of chemical dependency as a requirement for renewal of licenses.

SEX OFFENDER EVALUATIONS

Concern about the development of a closed system of evaluators for one diagnostic category of mental disorders, stems from a concern for a similar situation which has developed in the area of sex offender evaluations. The Department of Corrections has established guidelines and qualifications for sex offender evaluations and treatment providers (20.7.301). Presentence evaluations are performed by those mental health professionals approved by the department or who meet these established qualifications. In practice, this essentially limits evaluations to those who are members of the Montana Sex Offender Treatment Association (MSOTA). This sets up a closed system which prevents other professionals who are qualified by education and experience from testifying in these cases. This is problematic in three ways. (1) It is a restraint of trade for professionals licensed to function in this capacity and who are bound by professional ethics established by their professional associations. (2) It is improper for an administrative department to assume authority for setting practice standards usually developed by ongoing empirical research in the particular field of study. (3) It does not allow for challenges to the guidelines used by MSOTA in performing evaluations that, again, profoundly affect the lives of those citizens involved.

And, in fact, some of the guidelines used for evaluations by members of MSOTA are cause for concern.. I will point to the following examples:

- The American Psychological Association has established ethical principles and code of conduct to which members are to adhere. One principle (7.03) is related to the avoidance of multiple and potentially conflicting roles. The MSOTA system allows for the professional who performs the role of objective evaluator to also assume the role as the person's therapist. To complicate dual relationship problems further, the therapist also participates in punishment decisions, generally considered more appropriate for the court and probation experts.
- Standards of practice for users of assessment procedures requires that the evaluator be able to provide evidence on the validity and reliability of the information obtained from

the evaluation and on which any conclusion is made. The MSOTA guidelines require the use of the Multiphasic Sex Inventory and a polygraph examination. A plethysmograph is recommended. While these tools form a basis for conclusions, some of them are not generally admissible as evidence. Moreover, problems of validity and reliability in the use of these tests for this purpose requires caution and a high level of user qualification.

It's my opinion that avoiding a restrictive system of evaluation for politically sensitive mental health problems would allow a healthy, open debate on the evidence presented to the trier of fact. This would be more likely to prevent any abuse of power that may unintentionally develop in our judicial system.

Thank you for your consideration of this matter.

Respectfully submitted,

Sandra Whaley-Olson

Sandra Whaley-Olson, Ph. D.
Psychologist

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on January 22, 1997, at 8:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Excused: Rep. Brad Molnar (R)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 208, HB 239, POSTED 1/15/97
Executive Action: HB 42 DO PASS AS AMENDED
HB 111 DO PASS AS AMENDED
HB 195 TABLED

HEARING ON HB 208

Opening Statement by Sponsor: **REP. ROD MARSHALL - EXHIBITS 1, 2**
{Tape: 1; Side: A; Approx. Time Count: 1.1}

Motion: **REP. DEB KOTTEL moved HB 42 DO PASS AS AMENDED.**
{Tape: 1; Side: B; Approx. Time Count: 20.0}

Discussion:
{Tape: 1; Side: B; Approx. Time Count: 20.2 - 21.6}

Vote: The motion carried 18 - 1; REP. BOHARSKI voting no.
{Tape: 1; Side: B; Approx. Time Count: 21.7}

EXECUTIVE ACTION ON HB 195

Motion: **REP. BILL TASH moved HB 195 DO PASS.**
{Tape: 2; Side: A; Approx. Time Count: 0.1}

Motion/Vote: **REP. DUANE GRIMES moved the amendments to HB 195 - EXHIBIT 6.** The motion carried by unanimous vote.

Motion: **REP. TASH moved HB 195 DO PASS AS AMENDED.**
{Tape: 2; Side: A; Approx. Time Count: 1.0}

Discussion:
{Tape: 2; Side: A; Approx. Time Count: 1.2 - 3.0}

Motion/Vote: **REP. TASH moved to Table HB 195.** The motion carried 18 - 1, REP. MC GEE voting no.

EXECUTIVE ACTION ON HB 111

Motion: **REP. SHIELL ANDERSON moved HB 111 DO PASS.**

Motion: **REP. ANDERSON moved amendments to HB 111. EXHIBITS 7, 8**
{Tape: 2; Side: A; Approx. Time Count: 7.0}

Discussion:
{Tape: 2; Side: A; Approx. Time Count: 8.1 - 13.4}

Vote: The motion carried by unanimous vote.

Motion: **REP. DIANA WYATT moved to amend HB 111 by striking the immunity clause in Section 14.**
{Tape: 2; Side: A; Approx. Time Count: 22.3}

Discussion:
{Tape: 1; Side: A; Approx. Time Count: 22.6 - Tape 2; Side B; 1.9}

Motion: **REP. CHRIS AHNER moved a substitute amendment to insert "good faith" before "discretionary."**
{Tape: 1; Side: B; Approx. Time Count: 2.0}

Discussion:
{Tape: 1; Side: B; Approx. Time Count: 2.1 - 8.3}

Vote: The motion carried by unanimous vote.

Motion: **REP. "SONNY" HANSON moved HB 111 DO PASS AS AMENDED.**
{Tape: 2; Side: B; Approx. Time Count: 8.8}

Discussion:
{Tape: 2; Side: B; Approx. Time Count: 8.9 - 20.9; Comments: Chairman Clark relinquished the chair to Vice Chair Mc Gee.}

Motion: **REP. WILLIAM BOHARSKI moved to amend page 19, line 17 following "negligence" to insert ", except gross negligence or willful or wanton misconduct,."**
{Tape: 2; Side: B; Approx. Time Count: 21}

Discussion:
{Tape: 2; Side: B; Approx. Time Count: 21.2}

Vote: The motion carried 17 - 2, REPS. WYATT and HURDLE voting no.

Motion: **REP. ANDERSON moved HB 111 DO PASS AS AMENDED.**

Discussion:
{Tape: 2; Side: B; Approx. Time Count: 22.6 - Tape 3; Side A; 8.6}

Motion/Vote: **REP. BOHARSKI moved to amend HB 111 by striking section 14 and insert "[this act]" on lines 26 and 28.** The motion carried 17 - 2, REPS. SOFT and SMITH voting no.
{Tape: 3; Side: A; Approx. Time Count: 8.7 - 11.5}

Motion: **REP. BOHARSKI moved HB 111 DO PASS AS AMENDED.**
{Tape: 3; Side: A; Approx. Time Count: 11.6}

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 11.7 - 13.3; Comments: Representative Clark resumed the Chair.}

Vote: The motion carried 14 - 5, REPS. WYATT, PEASE, SANDS, ELLINGSON and HURDLE voting no.

Motion/Vote: **REP. WYATT moved for adjournment.** The motion carried by unanimous vote.

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE 1/22/97

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER	✓		
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI	✓		
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON	✓		
REP. DUANE GRIMES	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR			✓
REP. GERALD PEASE	✓		
REP. DIANE SANDS	✓		
REP. LIZ SMITH 8:45	✓		
REP. LOREN SOFT	✓		
REP. BILL TASH	✓		

EXHIBIT 7
DATE 1/22/97
HB 111

Amendments to House Bill 111
Introduced Bill (White)

Prepared by Beth Baker
By Request of the City of Billings
January 22, 1997

1. Page 15, line 9.
Following: "(1)(a)"
Strike: "or"
Insert: "must be with the probation office having supervision over the offender. Registration under subsection"

2. Page 16, line 4.
Strike: "law enforcement" in both places.

3. Page 16, line 5.
Strike: "and the offender's fingerprints and photograph"

4. Page 16, line 8.
Strike: "fingerprints,"

EXHIBIT 8
DATE 1/22/97
HB 111

Ahuer will propose 2

Proposed Amendments to House Bill 111
Introduced Bill (White)

Prepared by Beth Baker
By Request of the Department of Justice
January 21, 1997

1. Page 13, line ~~17.~~ 18
Following: line 17.
Insert: "(3) 'Personality disorder" means a personality disorder as defined in the fourth edition of the diagnostic and statistical manual of mental disorders adopted by the American psychiatric association."
Renumber: remaining subsections.

2. Page 13, line 18.
Following: "offense"
Insert: "committed against a stranger or"

3. Page 13, line 19.
Following: "victimization"
Strike: "or against a stranger"

4. Page 15, line 25.
Following: "registration."
Insert: "The department of justice may by rule establish fees to cover registration costs incurred by the department in maintaining registration and address verification records. The Fees ~~retained to cover the department's costs~~ must be deposited in the general fund."

5. Page 19, line 9.
Following: "predator"
Insert: "; An offender
"(4) (a) ~~A person~~ convicted of a sexual offense and designated a level 2 or level 3 offender under this section may petition the sentencing court to change the offender's designation if the offender has enrolled in and successfully completed:
(i) the treatment phase of the prison's sexual offender program; or
(ii) an equivalent program approved by the department.
(b) After considering a petition filed under this subsection, the court may change the offender's risk level designation if the court finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court must impose one of the three risk levels specified in this section."

PT. LCB4

FINAL COMMITTEE REPORT OF REFERRED BILLS

RUN DATE: 04/15/97

COMMITTEE--SENATE JUDICIARY

HAIRMAN--BRUCE CRIPPEN
ECRETARY-JUDY KEINTZ/JODY BIRD/36
ORMAL SCHEDULE => SITE: ROOM 325 DAYS: M,T,W,T,F TIME: 10:00 A.M.

BILL NO--	REFERRED	HEARING	OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE		REREFERRED	DATE READ
HB0029	BOHLINGER, JOHN 1/21	1/31	PROHIBIT POSSESSION, CARRIAGE & STORAGE OF WEAPON IN A SCHOOL BUILDING CONCUR AS AMENDED	VOTE:8-2	2-5	2/07
HB0040	COBB, JOHN 1/24	3/04	EXTEND FOR 2 YRS ATTORNEY GENERAL'S DUTY TO REPRESENT STATE IN BANKRUPTCIES CONCUR	VOTE: 10-0	3-4	3/05
HB0043	BANKHEAD, PAUL 1/23	1/29	REDEFINE ESCAPE AND ALLOW GOVERNMENT TO RECOUP COSTS FROM ESCAPEE CONCUR	VOTE: 8-2	1-30	1/30
HB0044	DEVANEY, CHARLES 2/11	3/11	LIMIT AND MONITOR INMATE FINANCIAL TRANSACTIONS; FINANCIAL ACCT DISCLOSURE CONCUR AS AMENDED	VOTE: 6-4	3-14	3/15
HB0065	MENAHAN, RED 1/27	3/11	INCREASE NEGLIGENT VEHICULAR ASSAULT PENALTY WHEN BODILY INJURY IS SERIOUS CONCUR AS AMENDED	VOTE:9-1	3-11	3/12
HB0068	MCGEE, DANIEL 2/11	3/06	ABOLISH GOV'T. LIABILITY FOR NEGLIGENT TORTS TO INCARCERATED CRIMINALS CONCUR AS AMENDED	VOTE:9-1	3-19	3/24
HB0098	CLARK, ROBERT 1/29	3/05	ELIMINATE HANGING AS MEANS OF EXECUTION CONCUR	VOTE: 8-2	3-5	3/06
HB0100	SOFT, LOREN 3/22	3/26	CHANGE PUNISHMENT FOR DRUNK DRIVING CONCUR AS AMENDED	VOTE:7-3	4-7	4/07
HB0111	AHNER, CHRIS 1/30	3/06	REVISE VIOLENT OFFENDER AND SEXUAL OFFENDER REGISTRATION LAW CONCUR AS AMENDED	VOTE:8-2	3-7	3/13
HB0122	MCGEE, DANIEL 1/24	2/05	REQUIRE PAYMENT OF FILING FEES PRIOR TO CIVIL ACTION BY PRISONERS CONCUR AS AMENDED	VOTE: 9-1	2-7	2/11
	SMITH, LIZ		REVISE MEDICAL PAROLE AND STAGGER TERMS OF MEMBERS OF BD. OF PARDONS & PAROL			

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **ACTING CHAIRMAN LORENTS GROSFIELD**, on March 6, 1997, at 9:00 A.M., in Room 104.

ROLL CALL

Members Present:
Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 268, February 24
HB 111, February 24
HB 68, February 24
Executive Action: None

HEARING ON HB 268

Sponsor: **REP. DEB KOTTEL, HD 45, Great Falls**

Proponents: **None**

Opponents: **Scott Crichton, ACLU**

Opening Statement by Sponsor:

REP. DEB KOTTEL, HD 45, Great Falls, introduced HB 268. She stated that the committee had a policy decision to make between two bills with the same title which are very different

SEN. HALLIGAN stated that Dr. Salatey stated to him that there were 6 or 7 people in the prison who were on this treatment right now. He questioned the need for the bill?

Ms. Heaton stated that Dr. Salatey has 6 or 7 people in the community on this treatment. They have 3 or 4 who they think should be on the treatment in the prison.

Closing by Sponsor:

{Tape: 2; Side: b; Approx. Time Count: 10:00; Comments: .}

REP. KOTTEL stated this is a treatment device for a handful of people. The average sex offender molests 240 times before being caught and when that person leaves prison he will molest 240 times again before being caught again.

HEARING ON HB 111

Sponsor: **REP. CHRIS AHNER, HD 51, Helena Valley and East Helena**

Proponents: **Dave Ohler, Department of Corrections**
Beth Baker, Department of Justice

Opponents: **Scott Crichton, ACLU**

Opening Statement by Sponsor:

REP. CHRIS AHNER, HD 51, Helena Valley and East Helena, stated the bill is revising state law to comply with federal law. It revises the laws pertaining to registration of sexual and violent offenders, creates classifications of sex offenders, and imposes new requirements for addressing the verification and dissemination of how this information is recovered. It also transfers responsibility for maintaining registry from the Department of Corrections to the Department of Justice, implements the Federal Jacob Wetterling Crimes Against Children Act and Sexually Violent Offender Registration Program. Funding could be penalized if the state does not adopt the provisions to the sex offender registration laws to be consistent with the federal statutes. This could mean a loss of $260,000 to Montana. Every person convicted of a sexual or violent offense would be required to register with the local law enforcement at the time of sentencing, if the offender is not sent to prison, or with the Department of Corrections, at least 10 days prior to release from the confinement in prison, and with the local law enforcement for out-of-state offenders who locate to Montana. Community notification will be handled at the local level by law enforcement agencies where the offender expects to reside.

Proponents' Testimony:

{Tape: 1; Side: b; Approx. Time Count: 10:04; Comments: .}

Dave Ohler, Department of Corrections, rose in support of HB 111. This bill is a joint effort by the Departments of Corrections and Justice. The purpose of this bill is to streamline the current sex and violent offender registration and to insure that federal funds are continued under the Jacob Wetterling Act. Offenders are required to register 10 days prior to being released from confinement. Current law states they must register 10 days after they leave prison. Offenders provide an address which turns out to be an attorney's address. This bill would require violent offenders to only register for ten years.

Sex offenders have a physical and physiological problem which follows them throughout life. However, oftentimes violent offenders commit one act of violence which may be a crime of passion and they may not commit another crime throughout the rest of their life. A violent offender would register for ten years, if they were crime free during that time, they would be relieved of the duty to register.

Under current law, failure to register is an offense but not keeping your registration current is not an offense. They amended the penalty provision of the bill to make it a crime to not keep your registration current.

Prior to the last session there were no provisions for public notification of the residence of sex offenders. That changed during the last session whereby if the Department thought that an offender was likely to reoffend and posed a serious threat, they could petition the District Court in Powell County and ask the district court for an order to release information about the sex offender which included his height, weight, a photograph, etc., for public notification. The problem with that is that it comes at the end of the incarceration. Oftentimes there is not enough time to get the petition, the order, and then the notification out to the public before the offender has left prison. This bill puts that determination up front. The sentencing court will receive recommendations from a sex offender evaluator about the sex offender and the level of the sex offender. The sentencing court will then make a determination and designate the sex offender a tier 1, 2 or 3 offender. The tiers refer to the likelihood that the offender will reoffend. A tier 1 offender would involve notification with local enforcement whereby a tier 3 would be notification for the public in general.

The bill provides immunity to state and local employees for their good faith efforts in notifying the public about sex offenders. A local official who mistakenly, but in good faith, notifies the public and releases information which he shouldn't have will not be subject to liability. Also, if he fails to notify the public accidentally, he would not be subject to liability.

Beth Baker, Department of Justice, spoke in favor of HB 111. She passed out a handout, **EXHIBIT 2.** They joined the Department of Corrections with this legislation for two reasons. The first was

to assist with the efforts being made at the national level and across the country, it will allow a better notice to Montana communities of sex offenders who may be a danger to children or other residents in entering their communities.

It will improve the state's ability to keep track of the registrations of sexual and violent offenders by transferring that function to the Department of Justice which already is responsible for maintaining most criminal history of record information.

The substance of the bill starts at page 13 and is contained in the last seven pages which deal with the sex and violent offender registration. The bill removes the requirement that a judge be involved in deciding whether there will be notice to the community. This is important because of the delay involved. Local law enforcement in our own communities are better able to decide when community notification is appropriate. An example in last Friday's paper was an article of a sex offender who assaulted a six year old girl in Deer Lodge who had been released from the state prison but the community was not notified until two months later that he had moved to Deer Lodge. By placing the requirement for registration before they are released from prison there would be immediate notice to local law enforcement through the Department of Justice. Both law enforcement in the community where the crime occurred and where the offender will be residing are notified immediately. The Department of Justice operates the criminal history records system and the state criminal justice information network which provides information to law enforcement agencies statewide. They will be able to compare the criminal history records they already keep with the offense registration records to make sure that offenders who are supposed to be registered in fact are registered. Because the bill transfers the record keeping function to the Department of Justice as well as imposes new obligations, there will be some extra costs. With most offenders, they will send out annual address verification notices to the offenders and they are required to respond within 10 days. Those designated sexually violent predators, have to meet this requirement every 3 months. The main cost will be the first year and after that the ongoing cost will be approximately $35,000 per year. This costs will ensure retention of federal funds. Montana receives approximately $2.6 million each year in federal grant funds under the Omnibus Crime Control and Safe Streets Act. Up to ten percent of that money could be lost if this system is not implemented. One of the highest occupations for former sex offenders is over the road trucking. It is important that they are able to share information with other states.

Opponents' Testimony:

{Tape: 1; Side: b; Approx. Time Count: 10:18; Comments: .}

Scott Crichton, ACLU, presented his written testimony in opposition to HB 111, **EXHIBIT 3.**

Questions From Committee Members and Responses:

{Tape: 1; Side: b; Approx. Time Count: 10:25; Comments: .}

CHAIRMAN GROSFIELD was concerned with the House amendments in Section 17. The two-thirds vote required for Section 14 now is required for the whole bill.

Ms. Baker stated that some members of the House Judiciary Committee were concerned about the importance of the immunity provision. They didn't want the bill passed unless local law enforcement would have immunity. They wanted the bill to have the immunity or not pass the bill. The vote was well over two-thirds.

CHAIRMAN GROSFIELD also questioned the designation. The offender could petition the judge to change the risk level designation.

{Tape: 2; Side: a; Approx. Time Count: 10:28; Comments: .}

Ms. Baker stated that because the risk level designation was made at the time of sentencing, it was felt that those offenders who completed treatment and their risk of committing a repeat offense had changed since the time of sentencing had changed, would be able to petition to have their risk level upgraded.

CHAIRMAN GROSFIELD asked if the offender could go from a level 1 to a level 3 as well?

Ms. Baker felt that by the time a person was convicted of a sex offense they would have committed many more. The evaluation at the time of sentencing should give the court enough information to determine the risk level.

SEN. BARTLETT asked which provisions were required to maintain the eligibility for federal funds?

Ms. Baker stated Megan's law requires them to give local law enforcement and law enforcement agencies the ability to release information. The other federal law which Megan's law amended is the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program Act. This requires the sexually violent predator designation. It requires that that registration requirement last at least ten years. It requires the registration for criminal offenses against minors include kidnapping of a minor, except by parents. The federal law does not have any requirements for violent offenses. That was in state law as of last session. The federal law requires address verification provisions and that there be a designated state law enforcement agency to handle the address verification process. They did not want to set up a state board to handle evaluations.

They chose to have the evaluations performed by prison staff. The tier 2 is not mandated by federal law. This is to strike a balance on what information is released to the community. That was done in Section 11 of the bill. The law enforcement agency will be authorized to release information which is relevant to the public if the agency determines that the offender is a risk to the community. There are guidelines set out in the tier system.

SEN. BARTLETT asked if it was necessary to take out the judicial process which was put in last session?

Ms. Baker stated that this would involve removal of the courts. Megan's law states that the designated state law enforcement agency and any local law enforcement agency authorized by the state agency shall release relevant information which is necessary to protect the public concerning a specific person required to register under this section. Previous law allowed the information to be disclosed to local law enforcement agencies for law enforcement purposes, to be disclosed to government agencies who were conducting confidential background checks and then provided that the designated state and local law enforcement agencies "may" release relevant information. They interpreted that to allow for a process of the court to be involved under the Jacob Wetterling Act but as amended it does put the discretion with the law enforcement agencies.

SEN. DOHERTY stated that on the floor they would be asked if there would be more funds for the additional responsibilities of local law enforcement under this bill.

Ms. Baker stated that this bill did receive the endorsement of the Attorney General's Law Enforcement Advisory Council which is made up of local law enforcement officials. There was some opposition in the House because it would require offenders to register with local law enforcement if they were not sent to prison. That was amended so they will register with the probation officer.

SEN. DOHERTY posed the hypothetical situation where law enforcement went to the wrong address due to a clerk's transposing error. The wrong house was broken into. This would be a simple act of negligence and not gross negligence. Would the immunity cover?

Ms. Baker stated the immunity provision provided immunity for good faith decisions to release or not release. If law enforcement wrongfully broke into someone's house there may be other remedies.

SEN. DOHERTY stated in a level 3 situation, if someone transposed the number in good faith, that individual would have no recourse?

Ms. Baker felt that would be correct.

SEN. DOHERTY stated that the feds have always given deference to state constitutions which provide greater protection for individual rights. How heavy is the federal hand?

Ms. Baker stated that Article II, Section 10, of the Montana Constitution provides that the right of individual privacy may not be infringed upon except on showing of a compelling state interest. The state's interest of protecting the community is compelling.

CHAIRMAN GROSFIELD asked for clarification of Section 11 regarding dissemination of information.

Ms. Baker explained the registration under current law is law enforcement agency to law enforcement agency. The goal of the bill is to have a centralized records keeper, which would be the Department of Justice, which would make sure that the local law enforcement agencies that has some connection to the offender gets the notice. Lines 7 through 9 set the general rules. The laundry list is the minimum requirements where they try to set out some guidelines for local agencies so that there is more uniformity about what information is to be released.

CHAIRMAN GROSFIELD felt that the House amendments in Section 12 would have a terrific fiscal impact on the bill. If every offender goes through the petition process to get their level lowered, that will be an expensive proposition.

Ms. Baker felt the offender could not petition unless they have enrolled in and successfully completed sex offender treatment. The court's involvement is up front.

CHAIRMAN CRIPPEN wondered why the judge's involvement could not be left in as an option.

Ms. Baker stated the federal law states the local law enforcement should have this discretion. The court is involved in the beginning.

<u>Closing by Sponsor</u>:

{Tape: 2; Side: a; Approx. Time Count: 10:58; Comments: .}

REP. AHNER commented that petitions take time and sometimes there are little six year old girls who do not have time. If the local law enforcement broke into her residence by mistake, she would be pleased that the local law enforcement was doing their job and be cooperative in any way that she could in helping them. If it upset her family and household, she would explain to her children the situation and try to inform them and pick up the attitude that we are a community that is trying to help one another.

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 3/6/97

NAME	PRESENT	ABSENT	EXCUSED
SUE BARTLETT	✓		
AL BISHOP	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
WALT MC NUTT	✓		
LORENTS GROSFIELD, VICE CHAIRMAN	✓		
BRUCE CRIPPEN, CHAIRMAN	✓		

SEN:1995
wp.rollcall.man
CS-09

Ex
HB 111

HB 111: Revision of Sexual and Violent Offender Registration and Public Notification Requirements

EXHIBIT NO. 2
DATE 3/6/97
BILL NO. HB 111

Background

The 1995 Legislature revised the laws pertaining to registration of sex offenders to include requirements for registration of some violent offenders and to clarify confidentiality requirements to allow more public notice. Changes in federal law now require community notice of the location of registered offenders where necessary for public safety and clarify standards for state registration and notification systems so that states may easily share information about sex offenders.

Purpose of HB 111

- **Provides greater public protection** by expanding the registration requirements to include all offenders convicted of felony assault against a family member, unlawful restraint against a child, and aggravated promotion of prostitution of a child, as well as convictions for attempt, solicitation and conspiracy to commit sexual or violent offenses.

- **Improves the state's ability to keep current information** about sexual and violent offenders by requiring periodic address verification and by transferring the offender registry and record-keeping functions from the Department of Corrections to the Department of Justice, which already houses the state's criminal history records and criminal justice information network. Placing the registry within the state's criminal justice agency will improve consistency of information and efficiency in records management, enabling the Department of Justice to serve as the clearinghouse for federal, state and local law enforcement agencies on all criminal history information about sexual and violent offenders.

- **Provides better public notification** when a sexual or violent offender moves into the community. Based on a determination of the offender's risk level at the time of sentencing, information concerning the offender's identity, convictions and residence may be released to the public without prior authorization of a court. The bill also allows local law enforcement to release any information necessary for public protection and provides law enforcement agencies immunity from suit for good faith decisions concerning release of information.

How the Registration System Will Work

Every person convicted of a sexual or violent offense will be required to register:
- with the local probation office at the time of sentencing if the offender is not sent to prison;
- with the Department of Corrections at least 10 days prior to release from confinement if a prison sentence is imposed; or
- with local law enforcement for out-of-state offenders relocating to Montana.

All registration information will be forwarded to the Department of Justice, compared with the offender's criminal history information, and distributed by the department to the FBI and to the local law enforcement agency where the offense occurred or where the offender intends to reside.

--over--

Once the offender has registered, the Department of Justice will send an address verification form at least annually. The department also will be responsible for notifying local law enforcement of any changes in the offender's address.

Community notification will be handled by local law enforcement agencies where the offender resides. A petition in district court will no longer be required to obtain release of information. While minimal information is required to be released about a low-risk offender, those designated as moderate or high risk of reoffending will be subject to public notice requirements that may include address, photograph and physical description, the offenses warranting registration, and any other registration information determined by local law enforcement to be in the interests of public protection.

The bill maintains existing law requiring sex offenders to register for life, and provides that violent offenders must remain registered for 10 years following their release from confinement, or longer if convicted during that time of failing to maintain their registration or of any other felony offense. As with current law, an offender may petition the court for relief from registration requirements after 10 years. However, if at the time of sentencing the offender was designated a "sexually violent predator," lifetime registration must continue unless the court finds that the offender no longer suffers from a mental abnormality or personality disorder likely to result in further predatory sexual criminal conduct. An offender may petition the sentencing court to lower his or her risk-level designation, if the offender has since completed sex offender treatment.

In order for the sentencing court to determine whether an offender should be designated as a "sexually violent predator," the bill authorizes the Department of Corrections to adopt rules to establish the qualifications of sexual offender evaluators and the standards by which they determine the risk of a repeat offense and the threat an offender poses to the public safety.

Fiscal Implications of HB 111

The Department of Justice expects that implementing HB 111 will cost an estimated $100,000 for the 1999 biennium, the majority for the startup costs necessary to:

- transfer the record-keeping function to the Department of Justice,
- apply the registration requirements retroactively to offenders convicted since 1989,
- assume new responsibilities concerning address verification and notification of other law enforcement agencies.

The Department of Justice will begin by comparing the 2,000-plus records already in the registry to its own criminal history record information, and will eventually automate the entire system, making information more accessible to law enforcement. The ongoing costs of this service will be minimal, especially when compared to the cost of not having this critical information available to law enforcement and the public.

HB 111 preserves Montana's entitlement to federal grant funding under the Omnibus Crime Control and Safe Streets Act of 1968 ("Byrne Formula Grant Funding"). States that fail to implement standards for registration and notification systems are subject to a 10 percent loss ($260,000 in Montana) of these federal funds, most of which goes directly to local programs.

Dept. of Justice Fact Sheet
Revised March 3, 1997

ACLU OF MONTANA
AMERICAN CIVIL LIBERTIES UNION
P.O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086 • FAX (406) 248-7763

EXHIBIT NO. 3
DATE 3/6/97
BILL NO. HB 111

March 6, 1997

Mr. Chairman, Members of the Committee:

For the record, my name is Scott Crichton, and I am the Executive Director of the American Civil Liberties Union of Montana, here today in opposition to HB 111.

I do so because as proposed it substantially erodes the delicate balance reached last session on this issue, while going further into politics of symbolism without attacking the real problem in any bold or effective manner.

I'm concerned that the definition of "mental abnormality" is so vague as to be non existent. The definition is important because an offender found to suffer from such an abnormality would be required to register for the rest of his life unless he could prove that he no longer suffered from the abnormality (46-23-506 3(b)).

The most odious and potentially dangerous section of the bill, Section 11, regards public notification. Under the law arrived at last session, (see page 18, deleted (2)), law enforcement could inform the public about released sex offenders *after they received a court order*. This form of judicial pre-clearance permits the offender to protect his substantial privacy interests, and involves as determination by a neutral body that good reason (public dissemination necessary for "public protection") exists to override these interests. ***The new procedure eliminates judicial involvement, vests law enforcement with unfettered discretion to release sex offender information to the public, and immunizes state officials from the consequences of negligent release of such information.***

This notification provision is based on a false premise that most sex offenses are committed by strangers -- fewer than 5% of sex offenses are committed by strangers; most are committed by family members or friends, who often intimidate or manipulate a victim who is a child into silence. The notification provision will therefore do little or nothing to increase public safety.

The registration provision requires sex offenders who were sentenced in another state to register within ten days of establishing residence in Montana. The problem with this is that, unless the sentencing state has a similar registration provision, the offender would

have no reason to know of his responsibilities under Montana law, and would subject himself to severe criminal penalties (up to five years in prison) merely by moving to Montana.

The statute provides for a five-year criminal penalty for failing to register, and sex offenders are required to register for the rest of their lives. Apart from the legal problems with the ex post facto applicability dates, the registration requirement inevitably would increase the already overwhelming overcrowding problem in Montana, while still doing little to increase public safety.

Much like the castration bills that are being heard today in both the House and Senate, this is another non-serious response to a serious problem. Registration laws create an illusion of safety, but do little to prevent such crimes from occurring. Instead they encourage vigilantism and force ex-offenders, most of whom are not recidivists, to move from place to place, often failing to seek and complete treatment. At the same time Congress and states are passing punitive laws that have only symbolic effect, public funding for treatment is becoming increasingly scarce even though studies have concluded that treatment is highly effective in reducing recidivism among sex offenders.

What is important to realize is that you cannot predict recidivism. Community notification ignores the real problem of lack of treatment. Notification serves to ostracize the ex-offenders from the community, making re-integration into society next to impossible. Re-offenders demonstrate the failure of prisons to rehabilitate and of how critical continued therapy and treatment are for ex-offenders after they are released.

Finally, the fiscal note deals only with the additional FTE at the Department of Justice and the $17,900 of new equipment. In all honesty, non-compliance with registration requirments, whether intentional or inadvertent, will have further inflationary impact on the prison population and should be reflected on in this discussion.

To close, the ACLU opposes community notification laws because they are ineffective and, when applied retroactively, violate the federal constitutional ban against state ex post facto laws (a law passed after the commission of an act, which retrospectively changes the legal consequences of such act). They also violate the 8th Amendment's protection against cruel and unusual punishment, the Fifth Amendment's protection against double jeopardy, and the right to privacy (avoiding disclosure of personal matters).

Although no federal appeals courts have yet ruled on the constitutionality of these laws, lower court federal judges have struck down community notification laws in New Jersey, New York, Washington, California, Illinois, Arizona, New Hampshire and Alaska on the grounds that they punish offenders who have already served their sentences.

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **ACTING CHAIRMAN SEN. RIC HOLDEN**, on March 7, 1997, at 9:10 a.m., in the Senate Judiciary Chambers (325) of the State Capitol, Helena, Montana.

ROLL CALL

Members Present:
Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 137, HB 168, HB 257
Executive Action: HB 137, HB 168, HB 222, HB 257, HB 68, HB 111

HEARING ON HB 257

Sponsor: **REP. DEB KOTTEL, HD 45, Great Falls**

Proponents: John Connor, Office of the Attorney General, Department of Justice, and for Dennis Paxinos, Yellowstone County Attorney
Shaun Donovan, Mineral County Attorney
Christopher Miller, Powell County Attorney

Bob Gilbert, Montana Magistrates
Mike McGrath, Lewis and Clark County Attorney, and President, Montana County Attorneys
Bob McCarthy, Butte-Silver Bow County Attorney

SEN. HOLDEN. Do you have any amendments? **SEN. HALLIGAN.** In good faith, I would look at this. The whole summary judgment issue should not be in the bill.

SEN. HALLIGAN. I withdraw my motion to table HB 68, so we can readdress it later on.

{Tape: 2; Side: B; Approx. Time Count:#10.1.}; Comments: 11:45 a.m.

EXECUTIVE ACTION ON HOUSE BILL 111

Motion: **SEN. MCNUTT MOVED HB 111 BE CONCURRED IN.**

Discussion: **SEN. CRIPPEN.** Why didn't they reinsert the stricken language? Why can't we let the agencies go to a judge to let him do what he's doing now, as local law enforcement may not always be in a position to understand what they're supposed to do. We're trying to conform to federal law. **Beth Baker.** You did ask about making it optional to have the Court review. We wouldn't resist this, but want to ensure there would be time limits, so the offender isn't released before the information is.

SEN. CRIPPEN. Is this a relatively simple thing to do? **Valencia Lane.** I believe it is. You'd have to trust me to come up with what **SEN. CRIPPEN** means.

Substitute Motion: **SEN. CRIPPEN MADE A SUBSTITUTE MOTION THAT THE LANGUAGE OUTLINED BY VALENCIA LANE BE ADOPTED.**

SEN. HALLIGAN. The drafted language must be very delicate here to ensure the information is released before the offender is released. **Beth Baker.** If they are in prison, they must register ten days prior to their release. If they're not in prison, it would have to be done immediately upon sentencing. I will work with Valencia Lane on the language.

Vote: **SEN. CRIPPEN'S MOTION TO AMEND HB 111 CARRIED UNANIMOUSLY.**

SEN. DOHERTY. I want it on the record concerning the immunity section on pages 19 and 20, in Section 14, that mistaken release of information and failure to release information are also being immunized. If the victims aren't notified in time and are harmed, under this language they'd have no recourse. We ought to think about this.

SEN. BARTLETT. Does immunity also cover a private entity, and who would this be? **Beth Baker.** It's in the federal guidelines for privately contracted registry, but at this time we have no plans to do this.

Motion/Vote: **SEN. MCNUTT MOVED HB 111 BE CONCURRED IN AS AMENDED. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS DOHERTY AND CRIPPEN WHO VOTED NO.**

HOUSE BILL NO. 111

INTRODUCED BY AHNER

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE IDENTIFICATION AND REGISTRATION OF SEXUAL AND VIOLENT OFFENDERS; PROVIDING FOR A SEXUALLY VIOLENT PREDATOR DESIGNATION; PROVIDING IMMUNITY FOR NEGLIGENCE; AMENDING SECTIONS 41-5-523, 44-6-101, 46-18-201, 46-23-501, 46-23-502, 46-23-503, 46-23-504, 46-23-505, 46-23-506, 46-23-507, AND 46-23-508, MCA; REPEALING SECTION 46-18-254, MCA; AND PROVIDING APPLICABILITY DATES."

WHEREAS, the Legislature finds that the danger of recidivism posed by sexual and violent offenders and the protection of the public from these offenders is of paramount concern to government and the people; and

WHEREAS, the Legislature further finds that law enforcement agencies' efforts to protect their communities, conduct investigations, and apprehend sexual and violent offenders is impaired by the lack of information about offenders who live within their jurisdictions; and

WHEREAS, the system of registering sexual and violent offenders provides law enforcement with information critical to preventing victimization and to resolving incidents of sexual or violent offenses promptly, including notification of the public when necessary to the continued protection of the community; and

WHEREAS, persons who have committed a sexual or violent offense have a reduced expectation of privacy because of the public's interest in safety; and

WHEREAS, the Legislature finds that releasing information about sexual or violent offenders to law enforcement agencies and, under certain circumstances, providing access to limited information about certain sexual offenders to the general public will further the primary governmental interest of protecting specific vulnerable groups and the public in general from potential harm.

THEREFORE, it is the policy of the State of Montana to assist local law enforcement agencies' efforts in protecting their communities by requiring that sexual or violent offenders register and to authorize the release of necessary and relevant information about sex offenders to the public.

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance for rules adopted under [section 12] concerning the qualifications of sexual offender evaluators and concerning evaluations of sexual offenders. The legislature intends that sexual offender evaluators possess education and experience similar to the education and experience requirements of therapists certified by the Montana sex offender treatment association. The legislature further intends that rules for evaluating the risk of repeat offenses by sexual offenders include the following factors:

(1) whether the sexual offender has a mental abnormality;

(2) whether the sexual offender's conduct is repetitive and compulsive;

(3) whether drugs or alcohol played a part in the offense or offenses;

(4) whether the sexual offender served the maximum term for the offense or offenses;

(5) whether the offense or offenses involved a child;

(6) the age of the sexual offender at the commission of the offense or offenses;

(7) the relationship between the sexual offender and the victim or victims;

(8) whether the offense or offenses involved use of a weapon;

(9) the number, date, and nature of prior offenses;

(10) conditions of release that minimize risk of another offense, including whether the sexual offender is under supervision or receiving counseling and treatment;

(11) physical conditions that minimize the risk of another offense, such as advanced age or debilitating illness of the sexual offender;

(12) whether psychological or psychiatric profiles of the sexual offender indicate a risk of recidivism;

(13) the sexual offender's response to and participation in treatment;

(14) recent behavior of the sexual offender;

(15) recent threats or gestures by the sexual offender against persons; and

(16) a review of any victim impact statements.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-5-523, MCA, is amended to read:

"**41-5-523. Disposition -- sentence to correctional facility -- commitment to department --**

placement and evaluation of youth -- restrictions. (1) If a youth is found to be a delinquent youth or a youth in need of supervision, the youth court may enter its judgment making one or more of the following dispositions:

(a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);

(b) place the youth on probation;

(c) subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years of age. A youth may not be sentenced to a state youth correctional facility unless the department informs the judge that space is available for the youth at that facility. The sentencing judge may not place limitations on the release unless recommended by the youth placement committee.

(d) require a youth found to be delinquent to register as a ~~sex~~ sexual or violent offender ~~pursuant to 46-18-254 and 46-23-506~~ under 46-23-504;

(e) place the youth in an in-state residence that ensures that the youth is accountable, provides for rehabilitation, and protects the public. Before placement, the sentencing judge shall seek and consider placement recommendations from the youth placement committee. The judge may not place the youth in an in-state residence unless the department informs the judge that resources are available for placement of the youth at that residence.

(f) commit the youth to the department. In an order committing a youth to the department:

(i) the court shall determine whether continuation in the youth's own home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home;

(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release into an appropriate placement.

(g) order restitution by the youth or the youth's parents;

(h) impose a fine as authorized by law if the violation alleged would constitute a criminal offense

if committed by an adult;

(i) require the performance of community service;

(j) require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;

(k) require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;

(l) require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may designate;

(m) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community and that does not obligate funding from the department for services outside the state of Montana without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(f), place a youth in a residential treatment facility.

(n) commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.

(i) A youth adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be committed or sentenced to a state youth correctional facility.

(ii) A youth adjudicated to be mentally ill or seriously mentally ill after placement in or sentencing to a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

(o) place the youth under home arrest as provided in Title 46, chapter 18, part 10.

(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) A youth in need of supervision or adjudicated delinquent for commission of an act that would not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

(b) A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the

power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

(c) A youth may not be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

(3) A youth placed in a state youth correctional facility or other facility or program operated by the department or who signs an aftercare agreement under 52-5-126 must be supervised by the department. A youth who is placed in any other placement by the department, the youth court, or the youth court's juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision by the youth probation officer includes but is not limited to:

(a) submitting information and documentation necessary for the person, committee, or team that is making the placement recommendation to determine an appropriate placement for the youth;

(b) securing approval for payment of special education costs from the youth's school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

(c) submitting an application to a facility in which the youth may be placed; and

(d) case management of the youth.

(4) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection (5). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court.

(5) The youth court shall determine the financial ability of the youth's parents to pay the cost of an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order the youth's parents to pay all or part of the cost of the evaluation.

(6) The youth court may not order placement or evaluation of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is transferable to criminal court under 41-5-206.

(7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.

(8) An order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and

subsequent hearing.

(9) Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of medical reports, social history material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(10) If a youth is committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(11) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

(12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the youth; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (11).

(14) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

Section 2. Section 44-6-101, MCA, is amended to read:

"**44-6-101. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of justice provided for in 2-15-2001.

(2) "DNA" means deoxyribonucleic acid.

(3) "DNA identification index" means the DNA identification record system established under 44-6-102.

(4) "DNA record" means DNA identification information stored in the DNA identification index for purposes of establishing identification in connection with law enforcement investigations or supporting statistical interpretation of the results of DNA analysis. The DNA record is considered the objective form of the results of a DNA analysis, such as the numerical representation of DNA fragment lengths, autoradiographs and the digital image of autoradiographs, and discrete allele assignment numbers.

(5) "DNA testing" means DNA analysis of materials derived from the human body for the purposes of identification consistent with this part.

(6) "Forensic DNA laboratory" means any laboratory operated by state government that performs DNA analysis on materials derived from the human body for use as evidence in a criminal proceeding or for purposes of identification.

(7) "Marker" means a method of describing individuals by genetic profile, such as blood or DNA

type, and has the specific meaning given to the word by department rule, which must take into account the meaning generally given to the word for forensic typing by DNA technologists.

(8) "Sexual offense" means the offenses contained in the definition of that term in 46-23-502.

(9) "Violent offense" ~~means an offense~~ has the meaning contained in ~~45-5-102, 45-5-103, 45-5-202, 45-5-302, 45-5-303, 45-5-401, or 45-6-103 or an equivalent offense under federal law or the law of another state~~ 46-23-502."

Section 3. Section 46-18-201, MCA, is amended to read:

"**46-18-201. (Temporary) Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) payment of the costs of confinement;

(v) payment of a fine as provided in 46-18-231;

(vi) payment of costs as provided in 46-18-232 and 46-18-233;

(vii) payment of costs of court-appointed counsel as provided in 46-8-113;

(viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(ix) community service;

(x) home arrest as provided in Title 46, chapter 18, part 10;

(xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;

(xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or

(xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; or

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence

of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in ~~46-18-254, 46-18-255, and~~ Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225.

46-18-201. (Effective July 1, 1997) Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) payment of the costs of confinement;

(v) payment of a fine as provided in 46-18-231;

(vi) payment of costs as provided in 46-18-232 and 46-18-233;

(vii) payment of costs of court-appointed counsel as provided in 46-8-113;

(viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(ix) community service;

(x) home arrest as provided in Title 46, chapter 18, part 10;

(xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;

(xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or

(xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; or

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in ~~46-18-254, 46-18-255, and~~ Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual offender program.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison

or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225.

(12) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does not apply to a person sentenced under 46-18-219."

Section 4. Section 46-23-501, MCA, is amended to read:

"**46-23-501. Short title.** ~~Sections 46-18-254,~~ Section 46-18-255~~,~~ and this part may be cited as the "Sexual or Violent Offender Registration Act"."

Section 5. Section 46-23-502, MCA, is amended to read:

"**46-23-502. Definitions.** As used in ~~46-18-254,~~ 46-18-255~~,~~ and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "PERSONALITY DISORDER" MEANS A PERSONALITY DISORDER AS DEFINED IN THE FOURTH EDITION OF THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS ADOPTED BY THE AMERICAN PSYCHIATRIC ASSOCIATION.

~~(3)~~(4) "Predatory sexual offense" means a sexual offense COMMITTED AGAINST A STRANGER OR against a person with whom a relationship has been established or furthered for the primary purpose of victimization ~~or against a stranger~~.

~~(4)~~(5) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct sexual offender and sexually violent predator evaluations.

~~(2)(5)~~(6) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a

violation listed in subsection ~~(2)(a) (5)(a)~~ (6)(A).

~~(3)(6)~~(7) "Sexual or violent offender" means a person who has been convicted of a sexual or violent offense.

~~(7)~~(8) "Sexually violent predator" means a person who has been convicted of a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses.

~~(4)(8)~~(9) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-301 (when the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302, 45-5-303, 45-5-401, 45-5-603(1)(b), or 45-6-103; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection ~~(4)(a) (8)(a)~~ (9)(A)."

Section 6. Section 46-23-503, MCA, is amended to read:

"46-23-503. Release of sexual or violent offender from place of confinement -- duties of official in charge. (1) A sexual ~~of~~ or violent offender who is released from the custody of the department of corrections must be informed in writing not less than 10 days prior to release of the duty to register under ~~46-18-254, 46-18-255, and~~ this part by the official in charge of the place of confinement.

(2) ~~The~~ Prior to the offender's release from custody, the official shall obtain ~~the address at which the person expects to reside upon the person's release and report~~ and give to the department of justice and to the sheriff of the county in which the offender intends to reside or, if the offender intends to reside in a municipality, to the chief of police of the municipality:

(a) the address ~~to the department of corrections. The department shall inform the appropriate law enforcement agency having local jurisdiction where the person expects to reside.~~ at which the offender intends to reside upon release from the department's custody;

(b) the offender's fingerprints and photo, unless they are already in the possession of the department of justice, sheriff, or chief of police; and

(c) a form signed by and read to or by the offender stating that the offender's duty to register under this part has been explained to the offender."

Section 7. Section 46-23-504, MCA, is amended to read:

"**46-23-504. Persons required to register -- procedure.** (1) A sexual or violent offender ~~shall, within 14 days of conviction or release from prison or~~:

(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department;

(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;

(c) shall register within ~~14~~ 10 days of entering a county of this state for the purpose of residing or setting up a temporary domicile for ~~14~~ 10 days or more~~,~~ if the offender was sentenced in another state.

(2) ~~register, as required under 46-18-254, 46-18-255, and this part,~~ Registration under subsection (1)(a) ~~or~~ MUST BE WITH THE PROBATION OFFICE HAVING SUPERVISION OVER THE OFFENDER. REGISTRATION UNDER SUBSECTION (1)(c) must be with the chief of police of the municipality or the sheriff of the county if the offender resides in an area other than a municipality. Whichever person ~~the~~ AN offender registers with UNDER SUBSECTION (1)(C) shall notify the other person of the registration.

~~(2)~~(3) At the time of registering, the ~~person~~ offender shall sign a statement in writing giving the information required by the department of justice. The chief of police or sheriff shall fingerprint the ~~person~~ offender, unless the ~~person's~~ offender's fingerprints are on file with the department of justice, and shall photograph the ~~person~~ offender. Within 3 days, the chief of police or sheriff shall send copies of the statement, fingerprints, and photographs to the ~~department and the~~ department of justice ~~and to the sheriff of the county where the person resides, if registration is with the chief of police~~.

(4) The department of justice shall mail a registration verification form each 90 days to an offender designated as a level 3 offender under [section 12] and each year to a violent offender or an offender designated as a level 1 or level 2 offender under [section 12]. The form must require the offender's current address and notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the department.

~~(3)~~(5) The ~~person registered under this section~~ offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. THE DEPARTMENT OF JUSTICE MAY ADOPT A RULE ESTABLISHING FEES TO COVER REGISTRATION COSTS INCURRED BY THE DEPARTMENT OF JUSTICE IN MAINTAINING REGISTRATION

AND ADDRESS VERIFICATION RECORDS. THE FEES MUST BE DEPOSITED IN THE GENERAL FUND.

~~(4)~~(6) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within ~~14~~ 10 days after entry of the judgment."

Section 8. Section 46-23-505, MCA, is amended to read:

"**46-23-505. Notice of change of address -- duty to inform -- forwarding of information.** If ~~a person~~ an offender required to register under ~~46-18-254, 46-18-255, and~~ this part changes residence, the ~~person~~ offender shall within 10 days of the change give written notification of the ~~person's~~ new address to the ~~law enforcement~~ agency with whom the ~~person~~ offender last registered. The ~~law enforcement~~ agency shall, within 3 days after receipt of the ~~information~~ new address, forward it ~~and the offender's fingerprints and photograph~~ to the ~~department, the~~ department of justice, ~~and the local law enforcement agency having jurisdiction over the new place of residence and~~ which shall forward a copy of the ~~statement~~ new address~~,~~ ~~fingerprints,~~ and ~~photographs of the person~~ photograph to the ~~local law enforcement agency~~ sheriff having jurisdiction over the new place of residence and to the chief of police of the municipality of the new place of residence if the new place of residence is in a municipality."

Section 9. Section 46-23-506, MCA, is amended to read:

"**46-23-506. Duration of registration.** (1) A ~~person~~ sexual offender required to register under ~~46-18-254, 46-18-255, and~~ this part shall ~~comply with 46-18-254, 46-18-255, and this part~~ register for the remainder of the ~~person's~~ offender's life, except as provided in subsection ~~(2)~~ (3) ~~of this section~~ or during a period of time during which the ~~person~~ offender is in prison.

(2) A violent offender required to register under this part shall register:

(a) for the 10 years following release from confinement or, if not confined following sentencing, for the 10 years following the conclusion of the sentencing hearing; or

(b) if convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep registration current or of a felony, for the remainder of the offender's life unless relieved of the duty to register as provided in subsection (3).

~~(2)~~(3) At any time after 10 years ~~since the date of the offender's last conviction of a sexual or violent offense~~ of registration, the offender may petition ~~a district~~ the sentencing court or the district court

for the judicial district in which the offender resides for an order relieving the offender of the duty to register ~~under 46-18-254, 46-18-255, and this part~~. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition upon finding that:

(a) the offender has remained a law-abiding citizen; and

(b) continued registration is not necessary for public protection and that relief from registration is in the best interests of society. If the offender was designated as a sexually violent predator under [section 12], the court is also required to find that the offender no longer suffers from a mental abnormality or personality disorder that makes the offender likely to engage in a predatory sexual offense.

~~(3)~~(4) The offender may move that all or part of the proceedings in a hearing under subsection ~~(2)~~ (3) be closed to the public, or the judge may ~~take action~~ close them on the judge's own motion. ~~Notwithstanding closure of the~~ If a proceeding is closed to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to privacy."

Section 10. Section 46-23-507, MCA, is amended to read:

"**46-23-507. Penalty.** A sexual or violent offender who knowingly fails to register, verify registration, or keep registration current under ~~46-18-254, 46-18-255, and~~ this part may be sentenced to a term of imprisonment of not more than 5 years or may be fined not more than $10,000, or both."

Section 11. Section 46-23-508, MCA, is amended to read:

"**46-23-508. Dissemination of information ~~in register~~.** (1) Information ~~in the register~~ maintained under ~~46-18-254 and~~ this part is confidential criminal justice information, as defined in 44-5-103, except that:

~~(1)~~(a) the name of a registered sexual or violent offender is public criminal justice information, as defined in 44-5-103; and

~~(2) before releasing from a state prison an inmate who is a sexual offender, if the department believes that release of information concerning the inmate is necessary for public protection, the department shall petition the district court for the judicial district in which the prison is located or for the judicial district in which the inmate intends to reside for an order allowing the department to release relevant and necessary register information regarding the inmate to the public. The court shall grant the order if the court finds that the information is necessary for public protection.~~

(b) a law enforcement agency shall release any offender registration information relevant to the public if the agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information may protect the public and, at a minimum:

(i) if an offender was given a level 1 designation under [section 12], the agency with which the offender is registered shall notify the agency in whose jurisdiction the offense occurred of the registration;

(ii) if an offender was given a level 2 designation under [section 12], the agency with which the offender is registered may disseminate the offender's name to the public with the notation that the offender is a sexual or violent offender and may notify a victim of the offense and any agency, organization, or group serving persons who have characteristics similar to those of a previous victim of the offender of:

(A) the offender's approximate, but not exact, address, such as by stating the neighborhood, town, or part of a county;

(B) the type of victim targeted by the offense;

(C) the name, photograph, and physical description of the offender;

(D) the offenses for which the offender is required to register under this part; and

(E) any conditions imposed by the court upon the offender for the safety of the public; and

(iii) if an offender was given a level 3 designation under [section 12], the agency shall give the victim and the public notification that includes the information contained in subsection (1)(b)(ii), except that the offender's exact address must be included. The agency shall also include the date of the offender's release from confinement or if not confined, the date the offender was sentenced, with a notation that the offender was not confined, and shall include the community in which the offense occurred.

(C) PRIOR TO RELEASE OF INFORMATION UNDER SUBSECTION (1)(B), A LAW ENFORCEMENT AGENCY MAY, IN ITS SOLE DISCRETION, REQUEST AN IN CAMERA REVIEW BY A DISTRICT COURT OF THE DETERMINATION BY THE LAW ENFORCEMENT AGENCY UNDER SUBSECTION (1)(B). THE COURT SHALL REVIEW A REQUEST UNDER THIS SUBSECTION (1)(C) AND SHALL, AS SOON AS POSSIBLE,

RENDER ITS OPINION SO THAT RELEASE OF THE INFORMATION IS NOT DELAYED BEYOND RELEASE OF THE OFFENDER FROM CONFINEMENT.

(2) The identity of a victim of an offense for which registration is required under this part may not be released by a law enforcement agency without the permission of the victim."

NEW SECTION. **Section 12. Sexual offender evaluations and designations -- rulemaking authority.** (1) The department shall adopt rules for the qualification of sexual offender evaluators who conduct sexual offender and sexually violent predator evaluations and for determinations by sexual offender evaluators of the risk of a repeat offense and the threat an offender poses to the public safety.

(2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual offender evaluator shall provide the court with a sexual offender evaluation report recommending one of the following levels of designation for the offender:

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the evaluator believes that the offender is a sexually violent predator.

(3) Upon sentencing the offender, the court shall:

(a) review the sexual offender evaluation report, any statement by a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(4) (A) AN OFFENDER DESIGNATED AS A LEVEL 2 OR LEVEL 3 OFFENDER MAY PETITION THE SENTENCING COURT TO CHANGE THE OFFENDER'S DESIGNATION IF THE OFFENDER HAS ENROLLED IN AND SUCCESSFULLY COMPLETED THE TREATMENT PHASE OF EITHER THE PRISON'S SEXUAL OFFENDER PROGRAM OR OF AN EQUIVALENT PROGRAM APPROVED BY THE DEPARTMENT. AFTER CONSIDERING THE PETITION, THE COURT MAY CHANGE THE OFFENDER'S RISK LEVEL DESIGNATION IF THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT THE OFFENDER'S RISK OF COMMITTING A REPEAT SEXUAL OFFENSE HAS CHANGED SINCE THE TIME SENTENCE WAS IMPOSED. THE COURT SHALL IMPOSE ONE OF THE THREE RISK LEVELS SPECIFIED IN THIS SECTION.

NEW SECTION. **Section 13. Expungement of records on reversal of conviction.** Upon final reversal of a conviction of a sexual or violent offense, the sentencing court shall order the expungement of any records kept by a court, law enforcement agency, or other state or local government agency under this part.

NEW SECTION. **Section 14. Immunity from suit.** A state or local governmental entity, a private entity, or an officer or employee of an entity is not liable in negligence, EXCEPT GROSS NEGLIGENCE OR WILLFUL OR WANTON MISCONDUCT, for damages arising from a GOOD FAITH discretionary release or dissemination of or GOOD FAITH failure to release or disseminate information under this part.

NEW SECTION. **Section 15. Repealer.** Section 46-18-254, MCA, is repealed.

NEW SECTION. **Section 16. Codification instruction.** [Sections 12 through 14] are intended to be codified as an integral part of Title 46, chapter 23, part 5, and the provisions of Title 46, chapter 23, part 5, apply to [sections 12 through 14].

NEW SECTION. **Section 17. Two-thirds vote required.** Because ~~[section 14]~~ [THIS ACT] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage OF [THIS ACT].

NEW SECTION. **Section 18. Applicability.** The provisions of [this act] relating to registration apply to:

(1) sexual offenders who are sentenced or who are in the custody or under the supervision of the department of corrections on or after July 1, 1989; and

(2) violent offenders who are sentenced or who are in the custody or under the supervision of the department of corrections on or after October 1, 1995.

-END-